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THE

TOWNSHIP AND TOWN OFFICERS' GUIDE

A SUMMARY OF THE LAW GOVERNING

TOWNS AND TOWNSHIPS

IN THE

STATE OF INDIANA

WITH INSTRUCTIONS AND FORMS

BY

FRANCIS ADKINSON

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PREFACE.

Although but a small part of the legislation of the State of Indiana is devoted to township affairs, the statutes prescribing the mode of transacting township business, as the laws of the State are now published, constitute parts of two large and expensive volumes, and also of the acts passed at the regular and special sessions of the legislature in 1877, published since the last revision.

It is, therefore, necessary for township officers, in order to be fully informed of the laws they are required to administer, and by which they must be governed in the discharge of their official duties, to have access to this large body of legislation, and then the information desired must be sought for among the statutes relating to every other subject.

It has been my purpose to present in the following pages the substance of all the statutes now in force, relating to township matters, in the smallest possible compass, and so arranged that any of the subjects treated may be readily referred to.

As appropriately belonging to a work of this character, a chapter has been added containing the sub-

stance of all the statutory provisions relating to the incorporation and government of towns.

Forms have been inserted where deemed necessary, especially in cases where officers are not required by statute to be furnished with blanks to be used by them in the performance of official duties.

References are given to Davis' Revised Statutes of 1876, and to the Acts of 1877; and also to the decisions of the Supreme Court of the State applicable to the subjects presented.

I am aware that the work will not be found free from imperfections, but hope I have succeeded in placing within the reach of all the means of becoming acquainted with certain branches of the law which are of practical interest and importance to every citizen, but which, in all the treatises upon the local law of the State heretofore published, have been almost wholly overlooked, and that the book will materially aid the officers for whom it was intended in the performance of their duties.

F. ADKINSON.

LAWRENCEBURGH, *October* 24, 1877.

INDIANA

TOWNSHIP OFFICERS' GUIDE.

CHAPTER I.

ANIMALS.

What animals may run at large.[1]—It is the duty of the board of commissioners of each county, to direct by an order entered on their order book what kinds of animals shall be allowed to pasture or run at large upon the uninclosed lands or public common within the bounds of any township, in their respective counties. The order must name the kinds of animals that are permitted to run at large, and the age, and also the particular class of such animals, whether male or female. Until such order is made, no domestic animal can lawfully run at large in this state.

Animals not permitted to run at large may be taken up.—When any animal which is not specified as permitted to run at large, in such order of the commissioners, shall be found running at large, or pasturing on any of the uninclosed lands, or public common, of any township in this state, any resident of such township may take up and impound such animal in any public or private pound in the township. The animal should be placed in the public pound, if there be one in the township; if not, a private inclosure may be used.

Notice of taking up.—The person taking up and impounding such animal must give immediate notice, in writing, to the owner thereof, if such owner be known to him. The notice may be as follows:

[1] 1 R. S. 1876, 64; 38 Ind. 557; 9 Ind. 397; 27 Ind. 96.

To Otho Lowe:

Take notice that I have this day taken up a horse belonging to you, and found by me running at large on the public common in Lawrenceburgh township, Dearborn county, Indiana, said animal not being allowed by law to run at large in said township; and that I have impounded said horse in the public pound of said township [*or*, on my farm in said township, as the case may be]. You are required to come and pay charges, and take said horse, or I will dispose of said animal according to law.

George Hayes.

August 10, 1877.

If immediately upon the delivery of this notice, the owner shall proceed to redeem the animal, he may do so by paying to the taker up one dollar and fifty cents.

It is immaterial what expense the taker-up may have incurred, or what his services may be in fact worth, the statute only permits the sum named to be charged, and the taker up can not be compelled to receive less.

Notice, if the owner is not known.—If the owner be not known to the taker-up, he must at once give notice, by posting written notices in three of the most public places in the township, stating the time of taking up, the age, marks, and a full description of the animal, and that the owner thereof is unknown to him, and the place where it is impounded.

Form of Advertisement.

Notice is hereby given that the undersigned, on the 10th day of June, 1877, took up a black mare described as follows, to wit: Said mare is sixteen hands high, has a scar on the left shoulder, mane and tail heavy, and both fore feet white.

Said mare was found running at large in Cass township, Ohio county, Indiana, contrary to law. Said animal is impounded in the public pound of said township, at Aber-

deen [*or*, at my farm, situated, etc., giving location in the township], and the owner of said mare is not known to me.

ELI S. RICHMOND.

June 10, 1877.

Owner may reclaim animal within ten days.—If, at any time within ten days after the posting of the notice, any person shall appear and claim the animal taken up as his property, and prove by his own affidavit, or the affidavit of another person, that the animal belongs to him, and shall pay the person taking up the same three dollars for his trouble and expense of keeping, the taker-up must immediately surrender the animal to such owner without further compensation, or any other proof of ownership.

FORM OF AFFIDAVIT OF OWNERSHIP.

State of Indiana, Ohio county:

William McHenry, being duly sworn, on oath says, that he is the owner of a black mare [*here describe as in the notices*], which was taken up and impounded on the 10th day of June, 1877, by Eli S. Richmond, while running at large on the public common in Cass township, in said county, contrary to law.

WILLIAM MCHENRY.

Subscribed and sworn to before me the 15th day of June, 1877.

HENRY SEDAM.
Justice of the Peace.

If the affidavit be made by another person for the owner, the above form can be varied accordingly.

Taker-up must take care of animal.—The taker-up must carefully attend to and provide food for the animal, and if, at the expiration of ten days from the date of posting the notices, no person shall appear or claim and prove the animal to be his property, the taker-up must immediately adver-

tise it for sale by posting written notices in three of the most public places in the township, describing the animal and stating that it was taken up as an animal not allowed by law to pasture on the public common, and the time and place where the same will be sold. At least ten days' notice must be given of the time and place of sale.

Form of Notice of Sale.

Notice is hereby given that the undersigned will, on the 10th day of July, 1877, at , sell at public auction, to the highest bidder, for cash in hand, one black mare [*describe fully*], taken up by me as an animal not allowed by law to pasture on the public common.

Eli S. Richmond.

If the owner do not appear and prove his property, as already explained, before the day of sale named in the notices, the taker-up must proceed to sell the animal at public auction, to the highest bidder, and out of the price received he may retain three dollars for his services in taking up the animal, and ten cents per day for every day he has kept and fed such animal, and the balance of the money he must pay over to the county treasurer for the benefit of the school fund. The county treasurer is required to retain the money in his office for one year from the time it was paid in, within which time the owner of the animal may prove, to the satisfaction of the auditor and treasurer, that the animal sold by the person paying the money into the treasury was his property, and receive the money less the fees.

Dogs subject to tax.[1]—Persons keeping or harboring dogs are liable to pay a tax of one dollar per year for each male dog, and two dollars per year for each female dog, and two

[1] 1 R. S. 1876, 69; 27 Ind. 62, 120.

dollars per year for each dog more than one, if such dogs are over the age of six months.

Township trustee entitled to receive the dog tax.—The township trustee of each township is entitled to receive from the county treasurer, in March of each year, the amount of dog tax paid into the treasury by persons residing in his township, and such tax shall constitute a fund for the payment of damages sustained by the owners of sheep killed or maimed by dogs within such township.

Persons having sheep killed by dogs may be paid.—Any person having sheep killed or maimed by dogs, may present a claim to the trustee of his township for damages.

The claim may be presented in the form of an account against the township, stating the number of sheep killed and their value, or the number maimed and the amount of damage done; and, upon proper proof being made, the trustee will be authorized to allow such damages as he shall deem just, and may pay the amount he allows out of the fund in his hands arising from such tax.

The trustee, however, can not make any allowance, if the person applying has brought an action and prosecuted the same to final judgment against the owner of the dog causing the damage, nor unless he will make an affidavit that he will not bring such action.

The claim for damages may be as follows:

FORM OF CLAIM FOR DAMAGES.

Lawrenceburgh Township of Dearborn County.

To OMER T. LUDLOW, *Dr.*

To damage done by the killing of six sheep by dogs on the 10th day of September, 1877, in said township, worth $2 each	$12 00
To damage done at same time and place by the maiming of three sheep by dogs	6 00
Total damage	$18 00

State of Indiana, Dearborn County.

Omer T. Ludlow, the claimant above-named, being duly sworn, says that he will not prosecute any claim for damages sustained by him as set forth in the foregoing account against the owner of the dogs causing such damage.

OMER T. LUDLOW.

Subscribed and sworn to before me, the 1st day of August, 1877.

SAMUEL MCELFRESH,
Township Trustee.

The statute is silent as to the mode of proof in such case. The trustee must, however, be satisfied of the correctness of the claim, and he is the sole judge of the sufficiency of the proof. He will be justified in allowing and paying the claim upon the affidavit of the claimant alone, if he believes it to be true, or he may require other evidence.

And the trustee may examine the claimant and his witnesses, if any are produced, orally, under oath or affirmation, or he may take their affidavits.

Owner of dog liable for damages for sheep killed.—The owner of sheep killed or injured by dogs is not, however, bound to look to the dog tax fund for payment of his damages. The act of June 15, 1852, which seems to be in force, provides that the owner or harborer of a dog will be liable to an action before any court of competent jurisdiction for the damage that may be sustained by the owner of any sheep killed or injured by such dog.[1]

When dogs may be killed.—Any person may at any time kill a dog found running, worrying, or injuring sheep, and if the owner of any dog which is in the habit of running from home and wandering about without the presence of

[1] 9 Ind. 72; 1 R. S. 1876, 70.

its owner, shall neglect or refuse to confine such dog, after due notice given to him of such wandering habits, it will be lawful for any person to kill such dog, wherever it may be found, running about off the premises and away from the presence of the owner. It is not necessary that the notice be given in writing.[1]

When owner of animals not liable for damage done.—The owner of domestic animals, not naturally inclined to commit mischief, such as cows, oxen, and the like, is not liable for any injury committed by them to the person or personal property of another, unless it can be shown that he previously had notice of their mischievous propensity, or that the injury resulted from, or was attributable to some neglect on his part.[2]

This rule of law does not apply to cases where animals break through a lawful fence, or where sheep are killed by dogs. The statute makes the owner liable in such cases.

Diseased sheep not allowed to run at large.—In order to prevent the spread of disease among sheep, it is provided by statute, that any person being the owner of sheep, or having them in charge, who shall turn out, or suffer any sheep having any contagious disease, knowing them to be diseased, to run at large upon any common, highway, or uninclosed grounds, or who shall sell any such sheep, knowing them to be diseased, without fully disclosing the fact to the purchaser, shall be deemed guilty of a misdemeanor, and be punished by a fine of not less than two nor more than twenty-five dollars for each diseased sheep, to be recovered as other penalties for like offenses.[3]

When dead animals must be buried or burned.—The act of March 11, 1867, provides that in all cases where any hog, shoat, or other domestic animal, shall die of the disease commonly called "hog cholera," or any other disease, it shall be the duty of the owner, or owners, of such hog, shoat, or other domestic animal, or the person, or persons,

[1] 1 R. S. 1876, 71. [2] 7 Ind. 317. [3] 1 R. S. 1876, 71.

having the care and custody of the same, having knowledge of the fact, or upon receiving notice thereof, to cause the carcass of such animal, without unnecessary delay, to be burned, or safely and securely buried, and on failure to do so, will be guilty of a misdemeanor and subject to a fine of not less than ten nor more than fifty dollars.[1]

Diseased cattle, when owner of is liable for damages.—It is unlawful for any person to bring into the state any cattle infected with the disease known as "Texas or Spanish fever," or any cattle liable to impart such fever to other cattle, and any person doing so, will be liable in a civil action to the person whose cattle may be thereby diseased, for the damages sustained by him.[2]

Evidence in suits against owner of diseased cattle.—When any Texas or Cherokee cattle, liable to impart such fever, shall be brought into the State of Indiana, and any disease, known as Texas or Spanish fever, shall make its appearance within sixty days and infect other cattle with the disease that have been on the same highway, common, or pasturage ground, traveled over by such Texas or Cherokee cattle, such fact shall be deemed and taken as *prima facie* evidence that the Texas or Cherokee cattle were infected with the disease known as Texas or Spanish fever, and that they did impart the disease; and the owner or owners of such Texas or Cherokee cattle, at the time of bringing the cattle into the state, and the owner or owners of the cattle at the time the disease shall make its appearance, shall be jointly or severally liable for any damages resulting from the disease, and if such fever is imparted to any cattle within sixty days on any highway, common, or pasture-ground, over which more than one drove or herd of Texas or Cherokee cattle have passed, the owner or owners of each herd or drove of such cattle shall be jointly or severally liable for all damages resulting from the disease; but on the trial of an action brought to recover such dam-

[1] 1 R. S. 1876, 68. [2] 1 R. S. 1876, 66.

ages, any defendant will have the right to prove, by any competent evidence, that his herd did not impart the disease, and if such proof is made to the satisfaction of the court or jury trying the cause, the defendant making such proof, will be entitled to judgment in his favor.

When unlawful to bring Texas cattle into state.—Any person bringing Texas or Cherokee cattle into this state at any time before the first of October, and after the first day of April of any year, and any person purchasing such cattle will be guilty of a misdemeanor, and liable to a fine of not less than one thousand and not more than ten thousand dollars, and may be imprisoned in the county jail in the discretion of the court trying the cause, not exceeding one year. The statute, however, does not prevent persons from shipping cattle through this state on railroads to other states, nor does it apply to cattle that have been during all the previous winter, north of the thirty-eighth degree of latitude; but in all cases where Texas or Cherokee cattle shall be brought into this state before the first day of October and after the first day of March in any year, the legal presumption will be that such cattle have not been during all the previous winter, north of the thirty-eighth parallel of latitude, and it will devolve on the owner of such cattle to prove the contrary.[1]

Cruelty to animals.—Any person who shall cruelly beat, or torture, or over-drive any horse or other animal, whether belonging to himself or another, shall be deemed guilty of a misdemeanor, and, upon conviction shall be fined in any sum not exceeding one hundred dollars.[2]

[1] 1 R. S. 1876, 67. [2] 2 R. S. 1876, 484.

CHAPTER II.

APPRENTICES.[1]

When township trustees may bind.—Township trustees are, by virtue of their office, overseers of the poor, and may, in their respective townships, bind children who are under sixteen years of age, in the following cases:

First. The child of any pauper, supported in whole or in part by the county.

Second. Any child whose parents abandon or neglect, or are unable to support it.

Third. Any child having neither father, mother, nor guardian, and having no sufficient means of support and education.

Fourth. Any white child taken from any asylum in any other state, and brought into this state to be bound.[2]

No indenture of any child under the first or second of the above specifications will be valid, unless the assent of the judge having probate jurisdiction in the county where the child is bound is obtained. His assent must be indorsed upon the indenture and he may withhold it until notice is given to the parents of the child, and they are examined as to the propriety thereof.

How long children may be bound.—Male children may be bound until they are twenty-one years of age, and females until they are eighteen; but the marriage of a female shall annul her indenture, without regard to her age.[3]

A child can not be bound for a time beyond the ages named, but may be for a shorter period.

Superintendents of county asylums may bind.—It is made the duty of superintendents of county asylums, by statute,

[1] 1 R. S. 1876, 626.
[2] 4 Blackf. 132.
[3] 3 Ind. 537; 6 Ind. 262; 25 Ind. 427.

to bind out such poor children as, from time to time, may be under their care and charge.[1]

Indentures where child is taken from a foreign asylum.—Indentures binding a child taken from an asylum in another state to a person in this state, will be valid if such indenture contains the covenants on the part of the master required of persons procuring children from such asylums, by the laws of the state where they are situated, but not for a longer period than children may be bound by the laws of this state.

How executed, where filed and recorded.—All indentures shall be signed by the parties thereto, and acknowledged by them before some officer authorized to take acknowledgments of deeds, and the indentures must be in two parts, one to be kept by the master or mistress, and the other to be filed in the office of the clerk of the circuit court of the proper county, for the use of the apprentice, and the master or mistress must cause the indentures to be recorded in the recorder's office of the county where the master or mistress lives, within ninety days after the execution thereof, for which the recorder is entitled to a fee of fifty cents.

In the execution of indentures of apprenticeship, the requirements of the statute must be strictly followed. No written instrument will be good as an indenture, unless it contains the agreements required by statute, and is acknowledged and recorded.[2]

Damages for failing to educate apprentice.—If the master or mistress fail to furnish the instruction required by the indentures, such master or mistress will be liable to the apprentice for such failure and the measure of damages will be what the value of the instruction would have been to the apprentice if given, which shall be determined by the verdict of a jury and the statute does not seem to limit the amount of the recovery.

The stipulation in the indentures of an apprentice in re-

[1] 1 R. S. 1876, 681. [2] 3 Ind. 537; 5 Ind. 142; 6 Ind. 262; 25 Ind. 427.

gard to his education can, therefore, be disregarded only at very great hazard to the master or mistress. Such instruction must be furnished if practicable. A fair construction of the language of the statute would seem to be that the branches mentioned must be taught if possible.

That it is merely inconvenient, or very difficult, will not excuse the master or mistress from the fulfillment of this agreement. Want of mental capacity on the part of the apprentice to acquire such education, or physical inability to attend upon the means of instruction, or the uncontrollable disobedience and insubordination of the apprentice, would render a compliance with the covenants of the indentures impracticable, and the master or mistress would not be liable.

If the apprentice have only three years, or less, to serve, or if the apprentice be a colored child, then no agreement as to the education of the apprentice is necessary to the validity of the indentures. Such seems to be the plain meaning of the statute; but since the enactment of the law upon the subject of master and apprentice, the legislature has made provision for the education of colored children, there seems to be no longer any good reason for such a discrimination against that class of children, and overseers of the poor should in such cases require the same agreement as to education that is required in the case of white children, and where the apprentice has less than three years to serve, although the indentures will be valid without any stipulation as to education, it is nevertheless the duty of overseers of the poor to provide for the education of the apprentice, as far as practicable in all such cases.

Valuable agreements in indentures.—All valuable agreements in any indenture, on the part of the master or mistress, shall be for the benefit of the apprentice, and, if stipulated therein, to be for the benefit of any other person, shall nevertheless stand for the benefit of the appren-

tice, and may be sued on, and a recovery had in his or her name.[1]

Circuit court may annul indentures.—The circuit court of each county where the master or mistress resides may, on complaint in writing, by any party to such indentures, or by any person on behalf of such apprentice, annul the same for the misconduct of the master or mistress, the court causing such notice as it may deem proper to be given to the parties; and if the indentures are annulled for the misconduct of the master or mistress, the court will render judgment in favor of the apprentice for such amount as may be proper.

Court may compel absconding apprentice to return.—The circuit court may, on application of the master or mistress, cause an absconding apprentice to return to such master or mistress; or, if he shall refuse, may commit him to jail. In all proceedings for this purpose, and to annul the indentures, the court may make such order as to the payment of costs as may be deemed just.

Indentures can not be assigned[2]*—Death or removal of the master.*—No indenture of any apprentice can be assigned, except by trustees of manual labor schools, as will be presently explained. The death, or removal from the state, of the master or mistress, shall discharge the apprentice from all further obligation; but in case of removal of the master or mistress, it is optional with the apprentice whether he will treat such removal as a release from the indenture. The master or mistress can not be released from the obligation of the indenture by removal from the state, without the consent of the apprentice that such removal shall so operate.

Number of hours per day apprentice may be required to labor.—The statute provides that an apprentice shall not be required to work more than ten hours a day, without additional compensation. By a fair inference, the statute

[1] 3 Blackf. 61; 5 Ind. 538. [2] 3 Ind. 125.

seems to permit the master or mistress to require the apprentice to labor more than ten hours per day, by making compensation for the additional time; but if the apprentice should be compelled to labor an unreasonable number of hours, it would be good cause for annulling the indentures and assessment of damages, on complaint made to the circuit court, even though such additional compensation be made.

Child may be bound by father, mother, or guardian.—Children may also be bound by the father, or if there be no father, or he be incompetent, then by the mother, or if there be neither father or mother competent to act, then by the guardian. If the child is over fourteen years of age, his or her assent to the indentures must be indorsed thereon and signed by such apprentice, and if such assent be not indorsed and signed the indentures will not be valid.[1]

When minor may bind himself.—Any child over the age of fourteen years, having neither father, mother, or guardian, may bind himself or herself, with the assent of the circuit judge of the county in which the indentures are executed, to be indorsed thereon by such judge.

By the act of March 7, 1875, it is also provided that any manual labor school, organized and incorporated under any law of the state, may accept and execute indentures of apprenticeship, and may have the same rights and assume the same liabilities as in the case of natural persons. The indentures must be executed for and in the name of the corporation, by the trustees thereof, or by some person or officer thereto authorized by the trustees. Children may be bound to such corporations in any of the cases where they may be bound to natural persons, and under the same rules and restrictions.

Indentures may be transferred.—It is also provided by the statute that the corporation may, with the consent of the

[1] 4 Blackf. 337.

apprentice and his parents, if living in this state, and upon the order of the judge of the circuit court, transfer any indenture taken in accordance with the act of 1875, to any person of lawful age, capable of making a contract. The transfer must be made by an agreement in writing, signed by the secretary or some person or officer authorized by them, and also by the person accepting such transfer, and must be approved by the circuit judge. The agreement of transfer must also contain a stipulation on the part of the person receiving the transfer, to assume and be bound by all the covenants in the indenture agreed to be performed by such corporation, and the agreement must be executed, acknowledged, and recorded in the same manner as the indentures are required to be.

Personal liability of trustees.—The trustees of the corporation will be personally liable, during the existence of the indentures, or until a legal transfer thereof is made, for the performance of all the covenants and agreements therein stipulated to be performed by the corporation; but upon the execution of the transfer, according to law, all the rights and liabilities of the trustees will terminate, and will vest in and be assumed by the person to whom the indentures are transferred, with the same effect as if he had been the original party to such indentures, instead of the corporation.

When trustees of soldiers' home may bind children.[1]—The trustees of the soldiers' home, when in their judgment it shall seem advisable, may indenture children placed in their care during minority, to such persons, and at such places in the state, and to learn such trades or employments, as in the opinion of such trustees shall be most conducive to the welfare of such children; but no such indenture will be valid that does not secure to the child all the benefits prescribed by the laws in force, governing the relation of master and apprentice, and it is the duty of

[1] 1 R. S. 1876, 850.

the trustees to see that such children are properly treated by the persons to whom they are bound, and to prosecute in the name of the state, all violations of such indentures prejudicial to such children, and the damages recovered will belong to the child in whose behalf the suit is brought.

Suit not to be brought on indenture after two years.—The statute provides that no suit shall be brought on any indenture after two years from the expiration of any term of service.

INDENTURE OF APPRENTICESHIP.

This indenture made and concluded between A. B., trustee of township, county of , and State of Indiana, and by virtue of his office of overseer of the poor of said township, of the first part, and C. D., of township, county of , State of Indiana. of the second part, witnesseth:

That said party of the first part, as such overseer of the poor, does, by these presents bind E, F., aged ten years, on the 14th day of May, 1877, and who is the child of G. H., a pauper, supported by the county of [*or any other cause for which a child may be bound*], as an apprentice to the party of the second part, until the said E. F. shall arrive at the age of twenty-one years, to learn the trade and occupation of a , and the said party of the first part, as such overseer of the poor, covenants with the said party of the second part, that said E. F. will serve him faithfully, and will correctly demean himself, during the term of his apprenticeship.

And the party of the second part, covenants and agrees with the party of the first part, for the use and benefit of the said apprentice, that he will teach the said E. F. the trade and occupation of a , during said term of apprenticeship, and will, during such term, board and lodge him, and furnish him with good and comfortable clothing, and wash and mend the same, and, in case of his sickness, will furnish him with medicines and medical attendance [*if the ap-*

prentice have more than three years to serve, add], and will cause him to be taught to read and write, and the rules of arithmetic to, and including the double rule of three, if the same be practicable, and at the expiration of his term of apprenticeship will [*here state what is to be paid to the apprentice at the expiration of his apprenticeship*].

In witness whereof, the parties have hereunto set their hands and seals, the day of 1877.

A. B. [SEAL.]

Overseer of the poor of township.

C. D. [SEAL.]

CHAPTER III.

ASSESSMENT OF TAXES.[1]

State taxes, on what and how assessed.—All taxes for the support of the state government are assessed on polls and property listed and valued in an equal and ratable proportion, except such stocks or other property as may be specifically taxed, as follows:

The amount necessary and proper to be charged on each poll and on each one hundred dollars worth of property for state expenditures and for school purposes, shall from time to time be fixed by law, and the amount to be charged on each poll and each one hundred dollars worth of property for county expenditures, must be fixed by the board of county commissioners at their annual meeting in June.

Who are liable to pay poll tax.—A poll tax shall be assessed upon every male inhabitant of this state, between the ages of twenty-one and fifty years.

What property liable to taxation—All real property within this state, and all personal property owned by persons residing in this state, whether it is in or out of the state, and all personal property within this state, owned by persons not residing within the state, subject to the exceptions hereinafter explained, is subject to taxation.

Terms "real property" and "lands" defined.—The terms "real property" and "lands," as used in the act providing for the assessment of taxes, means and includes not only the land itself, whether laid out in town lots or otherwise, with all things contained therein, but also all buildings, structures and implements, trees, and other fixtures of whatsoever kind thereon, and all rights and privileges belonging, or in any wise appertaining thereto.

[1] 22 Ind. 204; 27 Ind. 223; 29 Ind. 329.

Definition of "personal estate" and "personal property."—The terms "personal estate" and "personal property," as used in the same act, is construed to include all household furniture, goods, and chattels, and effects of whatever kind; all moneys on hand or on deposit, either within or without this state; all steamboats, sailing vessels, wharf-boats, barges, flat boats, canal boats, or other water-craft, whether within or without this state; all money at interest; all bonds or stocks, whether of bodies politic or corporate; and all other credits or investments, whether within or without this state; and the shares of stock of incorporated companies and associations organized under any law of this state or the United States.

All property of private corporations, except in the cases where some other provision is made by law, shall be assessed in the name of the corporation, in the township, city, or town where the same shall be situated; and in collecting the same all the personal property of the corporation shall be liable to be seized wherever the same may be found in the county, and sold in the same manner as the property of individuals may be sold for taxes.

Property exempt from taxation.—The following property shall be exempt from taxation:[1]

First. The property of the United States and of this state.

Second. The property of any county, city, or town.

Third. All fire-engine, and other instruments used for the safe-keeping thereof, and the land on which the building is located, when belonging to any town or city.

Fourth. Every building erected for religious worship, and the pews and furniture within the same, and the lands

[1] Statutes which exempt property from taxation must be strictly construed. 38 Ind. 3.

whereon such building is situated, not exceeding ten acres; also every cemetery.[1]

Fifth. Every building erected for the use of any literary, benevolent, charitable, or scientific institution, or by any individual or individuals, association or corporation, erected for the same purpose by any town, township, or county, and the tract of land on which such building is situate, not exceeding twenty acres; also, the personal property belonging to any institution, town, township, city, or county, and connected with or set apart for any of the purposes aforesaid.[1]

Sixth. All lands granted for the use of common schools, so long as the same shall remain unsold.

Seventh. The personal property and real estate of every manual-labor school, or college, incorporated within this state, when used or occupied for the purposes for which it was incorporated, such real estate not to exceed three hundred and twenty acres.

Eighth. The property of any widow or unmarried female, or of any female minor whose father is deceased, to the amount of five hundred dollars, if her whole estate, real and personal, not otherwise exempted from taxation, does not exceed in value the sum of one thousand dollars.

If used for other purposes, to be subject to taxation.—If any part, parcel, or portion of any tract or lot of land, or of any buildings or personal property, enumerated above as exempt from taxation, shall be used or occupied for any other purpose or purposes than those named, by reason whereof they are exempted from taxation, such part, parcel, or portion will be subject to taxation so long as the same shall not be set apart or used, exclusively, for some one of the purposes specified in the foregoing enumeration.

[1] But this does not embrace parsonages, and they are subject to taxation. 38 Ind. 3; 4 Ind. 86; 8 Ind. 328.

Lands sold by the state subject to taxation.[1]—Lands sold by the state, including lands forfeited to the sinking fund, university fund, and all other trust funds, though not granted or conveyed, shall be assessed in the same manner as if actually conveyed.

Lands reserved to any person by treaty.—All lands reserved to or for any individual, by any treaty between the United States and any Indian tribe or nation, shall be liable to taxation from the time such treaty shall have been confirmed.

When property is destroyed after assessment.—Where property, after being assessed for the year, is destroyed by fire, flood, tornado, or other unavoidable casualty, the auditor, on being satisfied thereof, may rebate from the taxes of that year, so much as may have been assessed on the property destroyed. But such rebate can only be allowed on so much of the loss as is not covered by insurance.

Upon proper proof being made to the auditor, he is bound to rebate the taxes to the extent provided by statute. The word "may" should be construed to mean "must," and the auditor has no discretion.

Assessors, election of.[2]—An assessor is required to be elected by the voters of each township, at the April election, who will hold his office for two years, and until his successor is elected and qualified.

Before entering upon the discharge of the duties of his office, the assessor must give a bond, with good and sufficient security, to the acceptance of the board of county commissioners, in the sum of two thousand dollars, payable to the State of Indiana, and conditioned for the faithful and impartial discharge of the duties of his office, according to law, and must take and subscribe an oath or affirmation, to be indorsed on the bond, that he will faithfully and impartially discharge the duties of his office to

[1] 49 Ind. 272. [2] 1 R. S. 1876, 98.

the best of his skill and ability, and the bond so indorsed must be deposited with the county auditor, who is authorized to administer such oath.

If assessor fail to qualify, auditor to appoint.—If the person elected fail to qualify in ninety days after his election, the office will be vacant, and the auditor will, without delay, fill the vacancy by appointment, and the person so appointed must give a like bond, and take the same oath required of a person elected to the office.

County auditor to furnish blanks.—It is the duty of the county auditor to furnish the assessors of his county with all blanks necessary to be used by them in the discharge of their official duties.

Under the statute now in force, real estate is assessed for taxation every fifth year, counting from 1875. Every owner of real estate must be assessed with the lands owned by him on the first day of April of the current year, including the lands purchased by him on that day. No assessment of lands is invalid by reason of not being listed or assessed in the name of any other person than the owner.

When auditor must furnish list of lands to assessor.—On or before the first day of April of each year in which real estate is to be assessed, the auditor must deliver to each assessor, by civil townships, lists of all lands, including town and city lots, entered on the duplicate of the same and preceding year, noting thereon all transfers which may have been made subsequent to making out such duplicate, and must also enter on such list all new entries and other lands and town lots lying within his county which may come to his knowledge, and not previously entered for taxation.

Auditor must furnish plat of townships.—The assessor is also entitled to receive from the auditor a plat of his township, divided into sections and quarter sections, at the same

time the blanks are furnished, and the assessor must designate the lands of each person on such plat.[1]

Assessment of real estate, how made.[1]—The assessor must make a true valuation of all the lands in his township subject to taxation, upon actual view, together with the improvements and buildings thereon, or affixed thereto, at their full, fair cash value, which the statute defines to be the price which could be obtained therefor at private sale, taking into consideration the fertility and quality of the soil, the vicinity of the same to railroads, turnpikes, macadamized, clay and gravel roads, state and county roads, cities, towns, and villages, navigable rivers, canals, and any water privileges on the same or in the vicinity, and any other local advantages of situation. The lands having improvements thereon must be valued at their fair cash value, without taking into consideration the improvements, that is, they must be appraised as if no improvements were upon them, and such valuation must be set down in a separate column, and the valuation of such land must, with the valuation of the improvements added, be set down in another column. All lots in cities, towns, and villages, and improvements thereon, or affixed thereto, must be assessed as other realty, at their full and true cash value, taking into consideration local advantages, and such property must also be assessed upon actual view.

When land must be assessed in name of occupant.—Lands occupied by any person not the owner thereof shall be listed in the name of the owner, if known, otherwise in the name of the occupant; and for the taxes, if paid by such occupant, he shall have his action against the owner, and lands not occupied must be listed in the name of the owner, if known, otherwise as "lands of persons unknown."

How lands in Clark's grant, etc., assessed.—When the line between two townships divides a tract of land, lying in the grants to English or French emigrants, or in Clark's grant,

[1] 1 R. S., 1876, 99.

or in individual Indian reserves (surveyed differently from the United States surveys), if listed to the owner thereof, he being a resident of either township in which a part of such tract of land may lie, or if listed to the occupant, the same shall be listed in the township in which such owner or occupant shall reside; and, in all other cases, the same shall be listed in the township in which the greater part thereof lies.

Mortgaged property.—When personal property is mortgaged or pledged, it shall, for the purposes of taxation, be deemed the property of the party who has the same in possession, and in cases of mortgaged real estate, the mortgagor shall, for the purposes of taxation, be deemed the owner, until the mortgagee shall have taken possession of the mortgaged pemises, after which the mortgagee shall be deemed the owner.[1]

Undivided lands of deceased person.—The undivided real estate of any deceased person may be listed to the heirs or devisees without designating them by name, until they shall have given notice to the auditor of the county or counties, in which such real estate is situated, of the division of the same, and the names of the several heirs or devisees and the proportion allotted to each, and each heir or devisee shall be liable for the whole of such tax, and shall have a right to recover of the other heirs or devisees their respective proportions thereof, when paid by him.

Partners in mercantile business.—Partners in mercantile or other business, may be jointly listed in their partnership name, in the township where their business is carried on, for all their personal property employed in such business; and, in case of being so jointly listed, each partner will be liable for the whole tax.

How real estate must be valued.[2]—The statute provides that real property shall be valued as follows:

First. Each tract or lot of real property at its fair cash

[1] 52 Ind. 233, 331.

[2] 1 R. S. 1876, 75

value, estimated at the price it would bring at a fair, voluntary sale.

Second. Taxable leasehold estates must be valued at such price as they would bring at a fair, voluntary sale for cash.

Third. When a building or structure, on the right of way of any canal, railroad, or other company, is leased or granted for a term of years to another, it may be valued at such price, as such building or structure and lease or grant would sell for at a fair, voluntary sale for cash.

Fourth In valuing and assessing any real property on which there is a coal or other mine, or stone or other quarry, it must be valued at such a price as the property including the mine or quarry would sell for at a voluntary cash sale.

Assessor must call on every person for list of lands.[1]—The statute requires the assessor to call upon every resident of his township, for a list of his lands and town lots, in such township, subject to taxation, and he will be furnished by the county auditor with blank forms, which he must require such person to fill up, so that the same will show particularly the name or names of the owner or owners, the number of acres in each particular tract, lot, or subdivision, the range, township, section, quarter-section, tract, lot, or part thereof, or the number of the entry, location or survey and water-course, as the nature of the general or particular survey may require, and if the same can not be described by the congressional survey, then it shall be described by metes and bounds, so as to clearly designate and identify the particular land to be listed. In the French and English grants, or Clark's grant, the list must set forth the quantity of land contained in the original survey, of which the tract listed is a part, the number of the entry, water-course, and the name of the original proprietor. Town lots must be described by the numbers by

[1] 1 R. S. 1876, 100.

which they are designated on the recorded plat of the town or city, or part thereof, if it has been subdivided, in which such lots are located.

The owner of the lands to be assessed may make the list, or the assessor may make it from information furnished by the owner, and such list must be signed by such person.

When owner is absent or refuses to list.—If the owner or owners of any real estate subject to taxation, be absent or unable to furnish a list thereof, when called upon by the assessor, or shall not reside within the county, or shall fail or refuse to furnish such list, it is the duty of the assessor to make such list according to the best information he can obtain; and he must assess such property in the name of the owner or owners, if known, or, if not known, then in the name of the person to whom the same is already listed, and if it is not listed to any one, and the owners name is unknown, it must then be noted in the column of names that the owner is unknown, and to enable the assessor to ascertain the facts in such case, he may examine, on oath or affirmation any person whom he may suppose to have knowledge of the amount, description, and value of the lands.

How the quantity of land is ascertained.[1]—In ascertaining the quantity of land in the tract to be listed, the assessor should be governed by the deed or patent for the land held by the person, if he have any, if such deed or patent specifies the quantity. If, however, the land has been surveyed after the survey made by the United States, and it shall be proven to the satisfaction of the assessor that any tract contains a greater or less quantity of land than is described in the patent or deed under which the land is held, then the assessor must charge the owner with the true amount ascertained by such subsequent survey.

If the quantity of land described in the deed or patent under which the person holds, is stated, the assessor may

[1] 1 R. S. 1876, 101.

safely assume that it is correctly stated, until the contrary is made to appear.

If the land to be assessed is in the French or Clarks grant, and the owner or person in whose name the land is listed, holds under an original entry or survey, with or without patent thereon, it is the duty of the assessor to require the owner or holder to cause the land to be surveyed by the county surveyor, or some other competent person, and to return the quantity ascertained by such survey, under the sworn certificate of the surveyor within sixty days from the time such person is called on to list such land.

If the owner neglect to make the survey, or is a non-resident of the county, then the assessor must cause the survey to be made and returned to himself, and the expense thereof will be paid out of the county treasury and assessed against the land the succeeding year, and collected as other taxes.

But if any owner or holder of lands has had them previously surveyed, and shall produce to the assessor a certificate of survey other than that under the original entry of said lands, the assessor may accept such survey; or, if the assessor be satisfied from other competent evidence adduced to him under oath or affirmation that the quantity returned is correct, and that no surplus exists in the original survey, the assessor shall enter and return the same for taxation without further survey. The assessor may deduct from the value of any tract of land, the amount of the land occupied and used by any railroad or canal at the time of assessment.

Assessor must inform owner of assessment, etc.[1]—The assessor, at the time of making the assessment, must inform the owner, his agent or representative, if residing in the county, of the description and value of each tract of land or lot, the amount at which the land has been assessed, and

[1] 1 R. S. 1876, 102.

the time when the board of equalization, for the county, will meet for the purpose of hearing and determining grievances, and equalizing taxes within the county; or he must furnish him a memorandum setting forth the same facts.

Assessors may enter premises with consent of owner.[1]—For the purpose of enabling the assessor to ascertain the value of buildings or other improvements, he is required, with the consent of the owner, to enter and fully examine all buildings and structures of every kind that are not expressly exempted from taxation. A fair construction of the statute seems to be, that if the owner should refuse permission to the assessor to enter his premises, he is not required to do so, but may ascertain their value by the examination of the owner or other person under oath or affirmation, and make the assessment from the information so obtained.

Return of assessment of real estate.[1]—Each assessor must, on or before the first Monday of June, in each year in which real estate is assessed, make out and deliver to the auditor of his county a return, in tabular form and alphabetical order, contained in a book to be furnished him by such auditor, of the amount, description, and value of all the real estate subject to be listed for taxation in his township, which return shall contain:

First. The names, arranged in alphabetical order, of the several persons, companies, or corporations, in whose name the several parcels of real estate in each township within his county shall have been listed, and in appropriate columns, opposite each name the description, in manner as hereinafter required, of each parcel of such real estate listed in such name, and the value of each separate parcel of such real property, as determined by the assessor from actual view.

Second. The names, arranged in alphabetical order, of

[1] 1 R. S. 1876, 102.

the several persons, companies, or corporations in whose names the several parcels of real property in any town or towns in his county shall have been listed, and in the appropriate columns, opposite each name, a description as hereafter set forth, of each parcel of real property in each town in his county, and the value thereof, as determined by the appraisers, as above specified, and such return shall distinctly set forth the name or names of the owner or owners of each separate parcel of real property, if known; and if unknown, that fact should be set forth. Also, a description of each separate parcel of land or real property, in the following manner: if a town lot or part thereof, the name of the town, the number or other designation of the lot; and if a part of such lot, then the proportion and situation thereof, and the extent in feet along the principal street on which it shall abut. If the parcel of real property be other than a town lot, or a parcel thereof, the number of acres, the range of townships, the number of townships, the number of section, tract, lot, or subdivision of either, or other general designation of any subdivision, if there be no number, as the case may require. If such land be situated in the French or Clark's grant, or is not embraced in any land district, it shall set forth the original survey or surveys, part or parts thereof, contained in each separate parcel so listed; and if any separate parcel of land shall comprehend the whole or parts of any two or more sections, lots, tracts, or surveys, then the statement shall set forth, as nearly as may be, the number of acres taken from each section, lot, tract, or survey included in each parcel.

Each appraiser and deputy-appraiser shall take and subscribe on oath, which shall be certified by the magistrate, or other officer administering the same, and attached to the return he is required to make to the county auditor, the form of which will be found with the blanks required, to be furnished by the county auditor.

New improvements to be assessed.[1]—Each assessor must, every year, except when real estate is assessed, at the time of assessing personal property, also take a list of all real estate situate in his township, that has become subject to taxation since the last previous listing of property therein, with the value thereof, estimated agreeably to the laws regulating the duties of assessors in relation to the assessment of real estate, and all new improvements, buildings, or other structures of any kind, the value of which shall not have been previously added to or included in the valuation of the land on which such improvements have been made, and make return thereof to the county auditor, at the same time that he is required to make return of personal property; in which return he shall set forth the parcel of real property on which each of such improvements shall have been made or structures erected, and the true value added to such parcel of real estate by the making of such improvements, or the erection of such structure, and the additional sum which it is believed the land on which the improvement shall have been made, or structure erected, will sell for at private sale, in consequence thereof, shall be considered the value of such improvement or structure.

When improvements are destroyed.[1]—In case of the destruction by fire, flood, or otherwise, of any improvement, building, or structure of any kind, which were erected previous to the last valuation of the land on which the same were, and the value of which shall have been added to any former valuation of such land, the assessor shall determine, as nearly as practicable, how much less such land would sell for at private sale in consequence of such destruction, and make return thereof to the county auditor, as provided in relation to improvements made and structures erected.

Refusal to list.[2]—The assessor must enter in a column of the blanks furnished to him, provided for that purpose,

[1] 1 R. S. 1876, 106. [2] Ibid, 104.

opposite the name of every person, company, or corporation required to list real estate, who shall refuse to furnish a list, the words "refused to furnish a list," and he must notify the person of the penalty for such refusal, which is that the county auditor must add twenty-five per cent. to the value of all real estate owned by the person, company, or corporation so refusing, as fixed by the assessor, according to the best information he can obtain.

Return of assessors and correction of errors.[1]—The assessor must, at the time he makes his return of the taxable real property to the county auditor, also deliver to him all the statements of property he has received from persons required to list real estate, and must arrange them in alphabetical order, and the auditor must preserve the same in his office. If the auditor is satisfied that the assessor has omitted any real estate which he ought to return, he must require the assessor to make the correction, and he must do so and make return thereof in ten days, and the correction must be made on the list of assessments, but the assessor can not reduce the amount of any assessment made against any person.

The auditor may, from time to time, correct errors in the amount or description of lands upon his list of real property.

Assessments of personal property, when made.[1]—The assessor must, between the first day of April and the first day of June of each year, call at the office, place of business, or residence of every person in his township required to list property for taxation, and take a list of all the taxable personal property of such persons, and assess the value thereof, and every such person when so called on must forthwith make a true statement in writing to the assessor, setting forth a correct description of all the personal property of which such person was on the first day of April of the current year the owner, or holder as guardian, parent,

[1] 1 R. S. 1876, 104.

receiver, husband or trustee, administrator, accounting officer, partner, agent, or factor, and also all moneys and credits owned or held by such person in any of the capacities just enumerated. The printed blanks furnished to assessors will be a sufficient guide in making the statement of taxable property in all ordinary cases.

In each year in which real estate is listed and assessed, personal property must be assessed at the same time, and by the same persons.

Assessor must fix value, and how.—The assessor must fix the value of each item of personal property, which must be the market value thereof at private sale at the place where the property is at the time of its liability to assessment. The value must be determined by the price of such property on the first day of April.

The statement must be sworn to before the assessor by the person making it.

Duty of assessor in case of refusal to list.[1]—If any person shall refuse to make the statement required, or, having made it, refuse to verify it by oath or affirmation, the assessor must proceed to ascertain the amount of personal property and effects of such person liable to taxation; and, to enable him to do so, the assessor may examine, on oath, any person whom he may suppose has any knowledge on the subject, and if such person refuses to be sworn by the assessor, or refuses to answer questions, the assessor may make application to any justice of the peace of the county, who will be authorized to issue a summons for such person, requiring him to appear before such justice, at such time as the assessor may designate, to answer under oath all pertinent questions put to him by the assessor touching the taxable property of the person refusing to list, and the attendance of the person summoned may be enforced by attachment.

How and by whom indebtedness may be deducted.[2]—In

[1] 1 R. S. 1876, 85. [2] Ibid, 86.

making up the amount of credits due to himself or to the person, company, or corporation he represents, any person may deduct from the gross amount thereof all *bona fide* debts owing by him or the person, company, or corporation he represents. They must be actual debts for a consideration believed to be adequate, and must not be debts created for the purpose of being deducted from taxable credits. If the person making the list is bound as surety he may deduct the amount he believes he will be legally compelled to pay if the principal debtor is insolvent. If other sureties are also bound with him for the same debt who are liable to contribute, then he can only deduct the proportion he believes he will be bound to pay. No bank, company, or corporation exercising banking powers and privileges is allowed to make any such deductions in any case, and no person, company, or corporation can make deductions from any item of taxables except credits; nor can any deduction be made from the amount of any bonds, stock, or money loaned, or on account of any bond, note, or obligation of any kind given to any insurance company on account of premiums or policies; nor on account of any unpaid subscription to any scientific, religious, literary, or charitable institution or society; nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or not. The deductions made must form a part of the schedule to be furnished to the assessor, and must be verified, and such schedule must be filed with the auditor by the assessor when he makes return of his assessment book.

When assessment may be completed.—Although the statute requires that the assessment of personal property shall be completed by the first day of June, it is provided that such assessment shall be valid if made after that day and before the return of the assessor's books. The assessor would probably be liable for neglect of official duty for failing to complete the assessment by the first day of June.

Personal property, how valued.—Personal property shall be valued as follows:[1]

First. All personal property, except as otherwise provided by statute, must be valued at its fair cash value.

Second. Every credit for a sum certain, payable either in money or labor, shall be valued at a fair cash value for the sum so payable. If for any article of property, or for labor or services of any kind, it shall be valued at the current price of such property, labor, or service.

Third. Annuities and royalties shall be valued at their then present total value.

Fourth. The capital stock of all companies and associations now or hereafter created under the laws of this state shall be so valued by the state board of equalization as to ascertain and determine, respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association. The state board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just; and such rules and principles, when so adopted, if not inconsistent with the statute, will be as binding and of the same effect as if contained in the statute, subject, however, to such change, alteration, or amendment as may be found, from time to time, to be necessary by the board. In all cases where the tangible property or the capital stock of any such company or association is assessed, the shares of capital stock of any such company or association shall not be assessed or taxed in this state. This provision of the statute, however, does not apply to the capital stock or shares of capital stock of banks organized under the general banking laws of this state.

Corporation property, how valued.[2]—Assessors and boards of equalization are prohibited by statute from fixing any greater value upon the property of companies incorporated

[1] 1 R. S. 1876, 74. [2] Ibid, 75.

under the laws of this state than would be assessed upon such property if it belonged to private individuals or firms.

How property must be listed.[1]—The following are the principal provisions of the statute regulating the manner of listing real and personal property.

First. Every person of full age and sound mind, not a married woman, being a resident of this state shall list his real estate, and all tangible personal property, subject to taxation situated and being in the county in which he resides.

Second. He shall list all moneys, credits, bonds, or stocks, shares of stock, of joint-stock or other companies (when the capital stock of such company is not assessed in this state), moneys loaned or invested, annuities, franchises, royalties, whether in or out of such county.

Third. He shall also list all moneys and other personal property invested, loaned, or otherwise controlled by him as the agent or attorney, or on account of any other person or persons, company, or corporation whatsoever, and all moneys deposited, subject to his order, check, or draft, and credits due from, or owing by, any person or persons, body corporate or politic.

Fourth. The property of a minor child shall be listed by his guardian; if he have no guardian, then by the father, if living; if not, by the mother, if living; and if neither father nor mother be living, by the person having such property in charge.

Fifth. The property of an idiot or lunatic, by his conservator; or, if he has no conservator, by the person having charge of such property.

Sixth. The property of a wife, by her husband, if of sound mind; if not, by herself.

Seventh. The property of a person for whose benefit it is held in trust, by the trustee; of the estate of a deceased person, by the executor or administrator.

[1] 1 R. S. 1876, 76; 27 Ind. 288.

If the decedent died after the first day of April, without giving in the amount of his taxables, his administrator or executor must give in the same as though such property had been in his possession on the first day of April.

Eighth. The property of corporations whose assets are in the hands of receivers, by such receivers.

Ninth. The property of a body politic or corporate, by the president or proper agent or officer thereof.

Tenth. The property of a firm or company, by a partner or agent thereof.

Eleventh. The property of manufacturers, and others in the hands of agent, by and in the name of such agent, as merchandise.

Where certain property must be listed.[1]—All real property, and merchants' and manufacturers' stock, shall be listed and returned for taxation in the county, township, city, or town in which it is situated. All other personal property except such as is, by express enactment otherwise required, shall be listed and assessed in the county, township, city, or town in which the owner resides. The capital stock and franchises of corporations and persons, except as may be otherwise provided in the county, township, city, or town in which the principal office or place of business of such corporation or person is located in the state, and if there be no such principal office or place of business in the state, then at the place in this state where such corporation or person transacts business.

When agent of owner must furnish list.[2]—Property, of whatever kind, situate or being in any county other than that in which the owner or owners thereof, or other persons required to list the same, resides, except the property of such companies as are required to give a statement thereof in the township where the principal office of such company is kept, and merchants' and manufacturers' stock which is required to be listed where the same is situated,

[1] 1 R. S. 1876, 77. [2] 27 Ind. 288.

shall be listed in the township where the same is situate, by the agents of the owner, or other person having possession or charge thereof, unless the owner shall list, or cause the same to be otherwise listed in the township where such property may be.

Where property connected with farm is listed, when owner lives in another county.—When the owner of live stock or other personal property connected with a farm, does not reside thereon, the same shall be listed and assessed in the township where the farm is situated. If the farm is situated in more townships than one, it shall be listed in the township in which the principal place of business on such farm shall be.[1]

Property in hands of agents, where listed.—The property of manufacturers and others, in the hands of agents, shall be listed and assessed at the place where the business of such agent is carried on.

When real estate exempt, is contracted to be sold.—When real estate is exempt in the hands of the holder of the fee, and the same is contracted to be sold, the amount paid thereon by the purchaser, with the enhanced value of the investment and improvement thereon, until the fee is conveyed, shall be held to be personal property, and listed and assessed as such in the place where the land is situated.[2]

Personal property in transitu.—Personal property, while passing from one place to another, shall be listed and assessed in the county, township, city, or town where the owner resides. If, however it is intended for a business, it shall be listed and assessed at the place where the property of such business is required to be listed.

Nurseries.—The stock of nurseries, growing or otherwise, in the hands of nurserymen, shall be listed and assessed as merchandise.

Personal property of bankers, insurance companies, etc., where listed.—The personal property of banks, or bankers,

[1] 1 R. S. 1876, 77. [2] 49 Ind. 272; 53 Ind. 60; but see Acts 1877, Reg. Sess., 139.

brokers, stock-jobbers, insurance companies, hotels, livery-stables, saloons, eating houses, merchants and manufacturers, ferries, mining companies, and companies not specially provided for, shall be listed and assessed in the county, township, city, or town, where the business is carried on, except such property as shall be liable to assessment elsewhere, in the hands of agents. All persons, companies, and corporations in the state, owning steamboats, sailing vessels, wharf-boats, barges, and other water-craft, shall be required to list the same for assessment and taxation in the county, township, city, or town, in which the same may belong, or be enrolled, registered, or licensed, or kept when not enrolled, registered, or licensed.

Gas and coke companies.—The personal property of gas and coke companies, except the pipes laid down, shall be listed and assessed in the city or town where the principal works are located. Gas mains and pipes, laid in roads, streets, or alleys, shall be held to be personal property, and listed and assessed as such, in the city or town where the same are laid.

Street railroads, turnpikes, etc.—The personal property of street railroad, plank road, gravel road, turnpike or bridge companies, shall be listed and assessed in the county, township, city, or town, where the principal place of business is located. The track, road, or bridge, shall be held to be personal property, and listed and assessed as such, in the county, township, city, or town, where the the same is located or laid.

Stage companies.—The horses, stages, and other personal property of stage companies, or persons operating stage lines, shall be listed and assessed in the county, township, city, or town, where they are usually kept.

Express and transportation companies.—The personal property of express or transportation companies shall be listed and assessed in the county, township, city, or town, where the same is usually kept.

Consignees.—No consignee shall be required to list, for taxation, the value of any property, consigned to him, for the sole purpose of being stored or forwarded, except to the extent of his interest in such property.

Persons listing property for others.—Persons required to list property on behalf of others, shall list it in the same place in which they are required to list their own; but they must list it separately from their own, specifying in each case the name of the person, estate, company, or corporation to whom it belongs.

Bonds, where principal of is exempt.—Persons, for themselves or others, holding bonds or stocks of any kind, the principal of which bonds or stocks has been or may hereafter be exempted from taxation, shall list the amount of accrued interest on such bonds, without regard to the time when the same is to be paid.

Money secured by deed.—When a deed for real estate is held as security for the payment of a sum of money, such sum, so secured, is held to be personal property, and shall be listed and assessed as credits.

Removals.—The owner of personal property, removing from one county, township, city, or town to another, between the first day of April and the first day of June, shall be assessed in either in which he is first called upon by the assessor. The owner of personal property moving into this state, from another state, between the first day of April and the first day of June, shall be listed for his poll and the property owned by him, on the first day of April of such year, in the county, township, city, or town in which he resides.

If such person has been assessed, and can make it appear to the assessor, that he is held for the tax of the current year on the property, in another state, county, township, city, or town, he shall not be again assessed for said year.

Question as to the proper place to list, how determined.—

In all questions that may arise as to the proper place to list personal property, or where the same can not be listed as required by the statute, if between several places in the same county, the place for listing and assessing shall be determined and fixed by the county board; and when between different counties, or places in different counties, by the auditor of state; and when fixed in either case shall be as binding as if fixed by statute.

Schedule to be furnished to assessor.—Persons required to list personal property shall make out and deliver to the assessor, at the time required, a schedule of the numbers, amounts, quantity, and quality of all personal property in their possession or under their control, required to be listed for taxation by them.[1] It shall be the duty of the assessor to determine and fix the fair cash value of all items of personal property.

Poll tax.—Every person shall be listed for his poll tax in the township where he resides when the enlistment is made.

Enlistment must relate to April first.—Every person must be listed in the township where he resides when the enlistment is made, for all personal estate owned by him on the first day of April of the year in which the enlistment is made, including all personal estate in his possession, or under his control as trustee, guardian, executor, or administrator, and also for all lands by him owned within such township, on the first day of April in which the enlistment is made, and occupied by him or wholly unoccupied, including all such real estate owned or held by him as trustee.

Bankers and brokers.[2]—The statute makes the following provision in regard to the assessment of bankers and brokers:

Every bank (other than a national bank), banker, broker, or stock-jobber, shall, at the time fixed by this act for

[1] 1 R. S. 1876, 79; 40 Ind. 353; 27 Ind. 288. [2] 1 R. S. 1876, 87.

listing personal property, make out and furnish the assessor a sworn statement, showing:

First. The amount of money on hand or in transit.

Second. The amount of funds in the hands of other banks, bankers, brokers, or others, subject to draft.

Third. The amount of checks or other cash items, the amount thereof not being included in either of the preceding items.

Fourth. The amount of bills receivable, discounted or purchased, and other credits due or to become due, including accounts receivable and interest accrued but not due, and interest due and unpaid.

Fifth. The amount of bonds and stocks of every kind, and shares of capital stock, of joint stock, or other companies or corporations, held as an investment or any way representing assets.

Sixth. All other property appertaining to said business, other than real estate (which real estate shall be listed and assessed as other real estate is listed and assessed under this act).

Seventh. The amount of all deposits made with them by other parties.

Eighth. The amount of all accounts payable, other than current deposit accounts.

Ninth. The amount of bonds or other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item.

The aggregate amount of the first, second, and third items in said statement shall be listed as moneys. The amount of the sixth item shall be listed the same as other similar personal property is listed. The aggregate amount of the seventh an eighth items shall be deducted from the aggregate amount of the fourth item of said statement, and the amount of the remainder, if any, shall be listed as credits. The aggregate amount of the ninth item shall be deducted from the aggregate amount of the fifth item

of such statement, and the remainder shall be listed as bonds or stocks.

Officers of chartered bank to furnish statements.[1]—The president or cashier of every bank or banking association organized under the law of the state or the United States, must, in addition to other property required to be listed, make out a statement, under oath, showing the number of shares comprising the capital stock of such bank, the name and residence of each stockholder, with the number of shares owned by such stockholders in such bank, the par and cash value of each of said shares, and also the par and cash value of the entire capital stock of such bank or banking association, on the first day of April of the current year, and shall deliver such statement to the county auditor in the county wherein such bank or banking association is located, on or before the first day of May; and the county auditor shall deliver to the proper assessor a copy of such statement, and such capital stock shall thereupon be listed and assessed by the assessor, and return thereof made in all respects the same as similar property belonging to other corporations and individuals, except that it shall be treated as personal property belonging to banks or banking associations, under the name of capital stock.[1]

Penalty for failure to make statement.—If the president or cashier fail to make such return within the time required, the county auditor must summon them to appear forthwith before him with the books of the bank, and obedience to such summons may be enforced and the auditor may examine them under oath and make such investigations at the expense of the bank as may enable him to obtain the information such officers are required to furnish.

When banks must retain tax on stock.[2]—It is the duty of the managing officers of every bank to retain so much of the dividends due any stockholder as will be necessary to

[1] 1 R. S. 1876, 89; 48 Ind. 568. [2] 1 R. S. 1876, 90.

pay the tax levied on their stock until it has been paid, and, failing to do so, will be individually liable for the tax. The shares of stock of any bank, whether organized under the laws of the state or United States, are liable to taxation for all purposes, the same as other personal property in the same locality. Taxes become a lien on bank stock on the first day of April of each year, and the lien will continue until the taxes are paid.

Pawnbrokers.[1]—Every pawnbroker must furnish to the assessor, under oath, a statement showing the value of all property pledged to and held by him and on hand on the first day of April of each year, and taxes must be charged to him upon the fair cash value thereof the same as other property.

Every person or company engaged in the business of receiving property in pledge, or as security for money or other thing advanced to the pledger, is a pawnbroker within the meaning of the law.

Companies and Corporations.[1]—Every banking, bridge, express, ferry, gravel road, gas, insurance, manufacturing, mining, plank road, savings bank, stage, steamboat, street railroad, transportation, turnpike, and all other companies and associations incorporated under the laws of the state (other than national banks), must, in addition to other property they are required to be listed, make out and deliver to the assessor the amount of its capital stock, setting forth particularly :

First. The name and location of the company or association.

Second. The amount of capital stock authorized and the number of shares into which such capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or, if no market value, then the actual value of the shares of stock.

Fifth. The total amount of all indebtedness, except the

[1] 1 R. S. 1876, 88.

indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth.—The assessed valuation of all its tangible property. Such schedule shall be made in conformity to such instruction and forms as may be prescribed by the auditor of state. In all cases of failure or refusal of any person, officer, company, or association, to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information which he can obtain. Such statement shall be scheduled by the assessor, and such schedule, with the statement so scheduled, shall be returned by the assessor to the county auditor.

Manufactures.[1]—Every person who purchases, receives or holds any kind of personal property for the purpose of adding to its value by any process of manufacturing, rectifying, refining, or by the combination of different materials, with a view of making a gain or profit by so doing, is a manufacturer, and when he is required to furnish a list of his other personal property, must also furnish to the assessor a statement of the value of all articles purchased, received, or otherwise held for the purpose of being used in whole or in part, in any process of manufacturing, combining, rectifying, or refining including the value of all manufactured articles on hand, in actual possession, or elsewhere held for sale, which statement must be verified by oath or affirmation.

Every person owning a manufacturing establishment, and every manufacturer, must list as a part of his personal property, the value of all engines and machinery, of every description, used or designed to be used, in any process of refining or manufacturing, except such fixtures as shall have been considered as a part of any real estate, and the statement must include tools and implements of every kind used or designed to be used for manufacturing purposes.

[1] 1 R. S. 1876, 95.

Merchants.[1]—Every person who has in his possession, or subject to his control, any personal property within this state, with authority to sell it, whether it has been purchased within or without the state, with a view to profit, or which has been consigned to him from any place out of the state, to be sold in the state, is a merchant, and when he is required to list his other personal property he must list, as merchandise, all property held or owned by him appertaining to his business as a merchant, and state the value thereof, under oath or affirmation, including with the amount on hand, in actual possession, all amounts purchased with a view to retaining the same in possession, and to be used in connection with his business, or for profit. No consignee is required to list for taxation the value of any property which is the product of this state consigned to him for sale, or otherwise, from any point in this state, nor the value of any property consigned to him from any other place, for the sole purpose of being forwarded, if he has no interest in the property in either case, nor in any profit to be derived from its sale.

Telegraph companies.—The office furniture and other personal property of telegraph companies, shall be listed and assessed in the county, township, city, or town where the same is used or kept. The capital stock of a foreign telegraph company, owning and operating a line of telegraph in this state, can not be assessed for taxation.[2] Such companies are required to make schedules and return the same to the auditor of the state, in the month of April of each year, and which must be made in conformity with the forms and instructions prescribed by him. The county auditor is required to compute and place upon the tax duplicate all taxes for which the property of telegraph companies are liable.

Railroad companies.[3]—Every person, company, or corpor-

[1] 1 R. S. 1876, 94.
[2] 47 Ind. 511; 1 R. S. 1876, 93.
[3] 1 R. S. 1876, 90.

ation owning, operating, or constructing a railroad in this state, must return sworn lists or schedules to the county auditor of the respective counties through which the railroad may be located, showing the property held for right of way, and the length of the main, and all side and second tracks and turnouts, in such county, and in each city or town in the county through or into which the road may run, and describing each tract of land, other than a city or town lot, through which the road may run, in accordance with the United States surveys, giving the width and length of the strip of land held in each tract, and the number of acres thereof. They shall also state the value of improvements and stations located on the right of way. New companies must make such statements in April next after the location of their roads. When such statement has been once made, it will not be necessary to report the description, unless directed so to do by the county board; but the company shall, during the month of April, annually, report the value of such property, describing it as a strip of land extending on each side of such railroad track, and embracing the same, together with all the stations and improvements thereon, commencing at a point where such railroad track crosses the boundary line in entering the county, township, city, or town, and extending to the point where such track crosses the boundary line leaving such county, township, city, or town, to the point of termination of the same, as the case may be; containing —— acres, more or less, and noting all additions or changes in such right of way as shall have occurred.

Railroad track, how assessed.[1]—The right of way, including the superstructures of the main track, side or second track, and turnouts, and the stations of the railroad company on such right of way, is held to be real estate, for the purpose of taxation, and shall be listed and valued as "railroad track" and the value of such track must be listed

[1] 1 R. S. 1876, 91.

and taxed in the several counties, townships, cities, or towns, in the proportion that the length of the main track in such county, township, city, or town bears the whole length of the road in the state, except the value of the side or second track, and all turnouts, and all station-houses, depots, machine-shops, or other buildings belonging to the road which must be taxed in the county, township, city, or town where located.

Rolling stock.—A list or schedule must be returned in the month of April of each year, containing a correct detailed inventory of all the rolling stock belonging to such company, and which shall distinctly set forth the number of locomotives of all classes, passenger cars, and all other kinds of cars of every name and description. The movable property of railroad companies is denominated "rolling stock," for the purposes of taxation, and is held to be personal property. The rolling stock shall be listed and taxed in the several counties, townships, cities, and towns in the proportion that the main track used or operated in such county, township, city, or town, bears to the length of the main track used or operated in such county, township, city, or town, bears to the whole length of the road used or operated by such person, company, or corporation, whether owned or leased by him or them, in whole or in part. The schedule shall set forth the number of miles of main track on which the rolling stock is used in the state, and the number of miles of main track on which said rolling stock is used elsewhere.

Other property, how assessed.—The tools, and materials for repairs, and all other personal property of any railroad except "rolling stock," must be listed and assessed in the county, township, city, or town wherever the same may be on the first day of April; also, real estate, including the stations and other buildings and structures thereon, other than that denominated "railroad track," belonging to any railroad, shall be listed as lands or lots, as the case may be,

in the county, township, city, or town where the same are located.

The county auditor shall return to the assessor of the proper township, city, or town, as the case may require, a copy of the schedule or list of the real estate (other than "railroad track") of, and the personal property (other than "rolling stock,") pertaining to the railroad; and such real and personal property shall be assessed by the assessor. Such property shall be treated in all respects, in regard to assessments and equalization, the same as other similar property belonging to individuals, except that it shall be treated as property belonging to railroads, under the terms "lands," "lots," and personal property.

Proceeding, where company fails to return schedule.—If any person, company, or corporation owning or operating a railroad shall neglect to return to the county auditor the schedules required by the statute, the assessor must list and assess the property which should have been returned, the same as other property, and if such person, corporation, or company fail to make the return to the auditor of the state required by the statute, the auditor and assessor must render him such assistance as he may require in obtaining the necessary information.

Penalty for giving false list.—If any person, company, or corporation shall give a false or fraudulent statement, list, or schedule, or fail, or refuse to give to the assessor, when called on for that purpose, a list of the taxable personal property which he is required by law to list, such person, company, or corporation will be liable to a penalty of not less than ten dollars, nor more than two thousand dollars, which may be recovered in a suit in the name of the State of Indiana, on the complaint of any person; and, when collected, the penalty must be paid into the county treasury. If any person shall willfully make any false list or schedule, under oath, such person will, in addition to such penalty, be liable as in case of perjury.

Return of assessors.[1]—Each assessor must, on or before the first Monday in June of each year, make out and deliver to the auditor of his county, in tabular form, and alphabetical order, lists of the names of the several persons, companies, and corporations, in whose name any personal property, moneys, credits, or other taxables, have been listed, setting opposite each name on the list, the aggregate value of the property of each person, and placing the names of persons residing in incorporated towns, in a separate list from those residing outside of such towns, and the column must be accurately added up, and if any persons have refused to list, or take the oath or affirmation, it must be so entered in the proper column. If any persons have been unable to list, because of absence or sickness, such fact must be noted, and the assessor must at the same time, deliver to the auditor all the statements of property he has received from persons required to make the same, arranged in alphabetical order, corresponding with his lists. When making assessments of personal property, it is the duty of each assessor to correct all errors of assessments of real estate which he may discover in the assessor's books, either in the name of the person to whom the property is assessed, in consequence of change of ownership or otherwise, or in the description of the property, and make the proper return to the auditor.

List of property for statistical purposes.[2]—It is also made the duty of each assessor, at the time of assessing personal property, to set down upon the blanks furnished him, in a column headed "for statistical purposes," the number of domestic and farm animals of all kinds, the quantities of farm and manufactured products, and the number of bushels of coal mined, and such other items of product, as may be directed by the auditor of state, and make return thereof as in case of taxables assessed by him. And he must also make and return in like manner, a list of all deaf and

[1] 1 R. S. 1876, 105. [2] Ibid, 106.

dumb and blind persons, with name and sex of each, the name of father and mother, or guardian, and post office address.

Assessors may appoint deputies.[1]—Every assessor may discharge the duties of his office in person, or may appoint one or more deputies, who, before proceeding to discharge the duties of their office, must take the same oath required of their principals. Assessors will be responsible for all the official acts of their deputies.

Compensation of assessors.[2]—Township assessors are allowed two dollars and fifty cents per day for their services. In estimating the number of days fractions of a day less than one half shall not be counted, and parts of a day more than one half will be counted as a whole day.

[1] 1 R. S. 1876, 418. [2] Ibid, 477.

CHAPTER IV.

BONDS AND OATHS.[1]

What officers must take oath and give bond.—All township officers, before entering upon their official duties, must take an oath to support the constitution of the United States and of this state, and must also execute a bond, payable to the State of Indiana, conditioned for the faithful performance of their duties.

Supervisors of highways must take an oath before assuming their official duties, but are not required to execute a bond.

Copy of oath to be deposited.—The oath must be indorsed on the commission or certificate and signed by the officer, and must be certified to by the officer before whom such oath is taken, who shall deliver to the person taking such oath a certified copy thereof.

Copy of oath to be filed.—Officers appointed by the board of commissioners, and such township officers as may be required to do so by such board (except justices and constables), with the county auditor.

Justices of the peace and constables must file a copy of their oaths in the office of the clerk of the circuit court.

How bonds must be executed.—All official bonds must be executed by the officer and one or more freehold sureties, and a copy of such bond, legally certified, shall be received as evidence, and suit maintained thereon as on the original. Before any official bond shall be accepted or approved, its execution must be duly acknowledged by the principal and sureties before some officer authorized to take the acknowledgment of deeds, which acknowledgment must be duly certified upon the bond by the officer taking the same.

[1] 1 R. S. 1876, 189.

Justices of the peace and constables must file their bonds with the clerk of the circuit court, and assessors and township trustees with the county auditor.

Not void for certain defects.—All official bonds are made payable to the State of Indiana, and recoveries may be had thereon until the penalty is exhausted, and no bond will be void because of defects in the form or in the approval or filing thereof.

When new bond may be required.—When the sureties on an official bond remove from the state or become insufficient, or where the penalty of the bond has become inadequate to secure the faithful performance of official duty, by reason of the diminution thereof by suits; or by the enactment of laws increasing the liability upon such bond, or other sufficient cause, the officer will be required to execute a new bond.

The clerk of the circuit court, upon his own knowledge, or where an affidavit showing any of such causes is filed with him, may issue a writ requiring such officer to appear before the judge of the circuit court, at the court house, on a day named, ten days after the service of such process, and such judge will require a new bond to be given or dismiss the proceeding as the facts may warrant, and an appeal will lie from his decision to the circuit court by either party. New sureties may sign the old bond without the formality of executing a new one.

Liability of sureties where new bond is given.—Where a new bond is given, the sureties on the old bond will be liable for the acts of the officer up to the date of the new bond, and the sureties on the new bond will only be liable for the acts of the officer from the date thereof.

Sureties may be released.—When any surety upon an official bond wishes to be released from further liability thereon, he must present a petition to the circuit judge, upon which the clerk may issue a summons requiring the officer

to appear before the judge and give additional bond and sureties. The officer is entitled to ten days' notice, and must, at the hearing, furnish a new bond, or the office must be declared vacant. In case a new bond is given, the petitioner will be liable for the costs. When a surety is released on his petition the statute requires a new bond to be given, and it will not be sufficient to require additional sureties on the old one.

CHAPTER V.

CONSTABLES.

Election of.—Constables are required to be elected at the April election, held in each township of the state, each alternate year, and as many are required to be elected in each township as there are justices in such township.[1] By an oversight, the statute now in force provides that constables shall hold their office for one year only, while it is provided that they shall be elected biennially. But as constables hold their office until their successors are elected and qualified, they practically hold for two years.

Must give bond.[2]—Constables are required to give an official bond, in the sum of one thousand dollars, conditioned for the faithful performance of their duties according to law, which bond must be approved by the clerk of the circuit court.

Duties of constables.[3]—It is the duty of a constable:

First. To serve all process legally in his hands, according to the command thereof, and to make legal return of the same.

Second. To attend all trials in which he may have served the process, preserve order, and enforce all legal orders of the justice at the trial.

Third. To note on all writs, except subpenas, the time of receiving the same, and all acts done by him in obedience to the command thereof.

Fourth. To pay over to the proper party, or to the proper justice, all money collected by him, by virtue of any writ.

Fifth. To act as conservator of the peace, and arrest and

[1] Acts 1877, Reg. Sess., 58.
[2] 2 R. S. 1876, 648.
[3] Ibid, 648.

take forthwith before the nearest justice, all persons who violate the law in his presence, and then charge them with such violation by his affidavit.[1]

Sixth. To levy every execution and make at least one effort to sell the property levied on, within one month after such execution comes to his hands, if property can be found, unless otherwise directed by the plaintiff, his agent, or attorney.

Seventh. To faithfully and diligently discharge all other duties, imposed on him by law.

A constable must not make return of an execution, that no property can be found to satisfy the same, until he has demanded such property, at the residence of the defendant, if he have one in the county.[2]

His duty when going out of office.—Every constable on going out of office, shall deliver to his successor all writs in his hands, with his proceedings indorsed thereon, and all property levied on, and remaining unsold, and all delivery bonds, and shall take such successor's receipts for the same, including in different receipts, the process from different justices, and must return such receipts to the proper justices, who must record the same on their docket, and carefully preserve the originals, and they shall if required, give to such constables a certified copy of such receipts.

In case of the death of a constable, his executor or administrator must make such delivery to his successor, or if none be elected or appointed, then to some other constable of the township, and shall make the same return thereof to the justices. If no executor or administrator has been appointed, such delivery may be made by the widow or next of kin.

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[1] When a constable arrests a person violating the law in his presence, without warrant, he must do so immediately. 3 Ind. 475. And in such case he can only detain him a reasonable time. Id. 479.

[2] After one full examination for property, without effect, he may at once return the execution. 5 Blackf. 561.

Territorial limits within which they may act.—Constables in the discharge of their duties, have power to act throughout their respective counties, unless specially restrained by law.

May call for assistance in discharge of duties. Whenever necessary, constables may call upon any number of persons to assist them in the discharge of their duties, and persons so called on will, in case of refusal be subject to a fine of not exceeding one hundred dollars, unless a valid excuse for such refusal can be shown.

Duties in case of commitment of prisoners.—Whenever a constable shall commit to jail any prisoner in his custody, he must leave with the jailer the writ by authority of which he commits such prisoners, and the jailer shall give him a receipt therefor, containing at length a copy of such writ.[1]

May arrest fugitives from justice.—A constable may, upon a proper warrant, arrest any fugitive from justice in any county where he may be found; but, if such fugitive request it, the constable must not remove him from the county without taking him before a circuit judge, and giving him time to make application for a writ of *habeas corpus*, and to have a hearing thereof. Constables must serve warrants issued by judges and justices of the peace, and make return thereof in cases of fugitives from justice from other counties and states.

Liable on bond for failure of duty.—If a constable make a false return of any writ, or shall fail to make return at the return day thereof, or shall fail to discharge any of the duties imposed on him by law, he shall, with his sureties, be liable on his bond to the person injured, to the extent of the injury sustained, with ten per cent. damages thereon.

Liability for failing to pay over money.—If a constable fail to pay over to the proper person, on demand, or to the proper justice, within one month after the receipt of the

[1] 2 R. S. 1876, 651.

ame, any money collected by him by virtue of his offices, he shall, with his sureties, be liable on his bond to the person injured, for such money, and twenty-five per cent. damage on the amount wrongfully withheld.

The meaning of this provision of the statute, seems to be that if the person to whom the money collected belongs, his agent or attorney, shall make demand, he must pay over, forthwith, and that he is bound to pay it to the proper justice within one month after he has collected the money, without any demand.

Duties in attachment cases.—When a writ of attachment has been placed in his hands, against the goods and chattels of a defendant, the constable must, with the assistance of a disinterested and credible householder of the township, attach the defendant's property, subject to execution, and make an inventory and appraisement thereof, and return the same with the order of attachment, which he must do within ten days, and his doings must be indorsed on the writ. The justice of the peace, before whom the attachment proceeding is pending, is authorized to allow the constable the necessary expenses of keeping the attached property, to be taxed with the costs.

Summons for garnishee.—The constable will serve the summons for a garnishee, and make return thereof, in the same manner as a summons is served and returned in other cases.

Constables' sales.[1]—All sales by constables must be at public auction in the township where the goods are seized, between the hours of ten in the forenoon and five in the afternoon, and ten days' notice must be given by the constable of the time and place of sale, by posting up written notices, in three public places in such township, and he can not become a purchaser, either directly or indirectly, at such sale.

Process, where served, etc.—Executions, writs of attach-

[1] 2 R. S. 1876, 632.

ment, and writs of replevin, may be served throughout the county, and executions must be made returnable in six months, but may be returned by the constable sooner, if satisfied, or if no property can be found to levy upon.

The statute prohibiting a constable from purchasing judgments upon the docket of any justice of his township has been held void by the supreme court, for the reason that the provision was placed in the justices' act instead of the act defining the duties of constables.

A constable can not act as agent or attorney for a party in a justice's court in his township, and perhaps the statute should be construed to exclude a constable from appearing as agent or attorney before any justice of the county.

May take delivery bonds.—When constable levy on goods by virtue of an execution placed in their hands, they must permit the defendant to retain the possession thereof if a delivery bond be executed. The constable will be responsible for the sufficiency of the bond and the solvency of the sureties.

Duties in relation to coroners' inquests.—When the coroner shall deem it necessary to hold an inquest, he is authorized to issue his warrant to a constable of the township where the dead body is lying, requiring him to summon a jury of six men of such a township, to appear before the coroner at the time and place named in the warrant, and such constable must, at once, make service thereof, and then immediately repair to the place where the dead body is, and make return of the warrant, with his proceedings thereon, to the coroner who issued the same.

FORMS.

The statute provides that the following forms will be sufficient in all cases to which they are applicable, and they will apply to nearly all cases that will arise in the discharge of the duties of a constable.

INDORSEMENT AND RETURN OF SUMMONS

January 2, 1877. Writ came to hand.

January 3, 1877. Served the within writ by reading the same to defendant [*or*, by copy left at his last usual place of residence, as the case may be]. Or, if the defendant is not found, as follows: This writ is not served, the defendant not being found, and having no last usual place of residence in my county.

JOHN SMITH,
Constable.

January 10, 1877.

RETURN TO A CAPIAS AD RESPONDENDUM.

January 10, 1877. I have the defendant in custody, in obedience to this writ.

Or, as the case may be: The defendant can not be found in my county.

JOHN SMITH,
Constable.

RETURN TO A WRIT ON COMPLAINT FOR THE WRONGFUL TAKING OR DETENTION OF PROPERTY.

January 10, 1877. I have executed the within writ, by seizing the property therein named, and delivering the same to the plaintiff; and, on the 4th of January. 1877, served this writ on the defendant by reading [*or*, by copy thereof left at his last usual place of residence, as the case may be].

JOHN SMITH,
Constable.

RETURNS ON WRITS OF FIERI FACIAS.

January 10, 1877. I have visited the residence of the defendant in this writ, and can find no property there, or elsewhere, subject to execution, to levy upon.

JOHN SMITH,
Constable.

Or, if property be levied upon, and not sold, as follows:

January 10, 1877. In obedience to the command of this writ, I this day levied upon one bureau and six chairs, and took the same into possession.

January 25, 1877. Caused the property levied on to be appraised by Job Hayes, John Stiles, and John Doe, who appraised said bureau at ten dollars, and said chairs at fifty cents each, which appraisement is herewith returned.

February 10, 1877. Offered the property levied on, for sale at auction, but no person bidding therefor the proper amount, the same was not sold.

February 11, 1877. Defendant, with Thomas Jones as his surety, executed delivery bond for the property levied on, and the same was delivered to him; and said bond is herewith returned; and no other execution of this writ has been had.

Returned this first of April, 1877.

JOHN SMITH,
Constable.

If the property was sold, change as follows:

February 10, 1877. Property levied on sold, pursuant to notice, at auction. Henry Smith purchased the bureau at ten dollars, and John Watkins purchased the chairs at three dollars; and no other property of the defendant, subject to execution, can be found in my county [*or*, if further levy and sale, or offer to sell, has been made, state the facts accordingly].

JOHN SMITH,
Constable.

RETURN OF A STATE WARRANT.

January 2, 1877. I have the defendant named in the within writ in custody.

JOHN SMITH,
Constable.

Delivery Bond.

We, Richard Roe and James Smith, acknowledge ourselves bound to John Doe, in the sum of fifty dollars.

Witness our hands and seals, this 3d day of January, 1877.

Whereas, John Smith, constable, has levied a *fieri facias*, issued by Richard Stiles, justice, in favor of said John Doe, against said Richard Roe, on one horse, of the value of twenty-five dollars, as the property of said Richard Roe, and is about to return said horse to be kept by said Richard Roe, until demanded: Now, if said Richard Roe shall, when requested by said constable, or any other constable, having said *fieri facias*, or any *alias* or *pluries fieri facias* on the same judgment in his hands, have said horse at the time and place that may be fixed for the sale thereof, and shall then and there return said horse to any such constable, then the above bond shall be void; else in force.

Richard Roe,
James Smith.

Test:

John Smith,
Constable.

CHAPTER VI.

ELECTIONS.

Presidential eleetion.[1]—The election for presidential electors, is required to be held on the Tuesday next after the first Monday in November, of every fourth year, counting from the year 1852, which election is governed, in all respects, by the law governing general elections in this state. The board of judges, in the several townships and precincts, must make out certificates and sign the same, certifying, in words, the number of votes that each person received for elector, which must be attested by the clerks, sealed in the presence of the judges, and then placed in the hands of one of such judges, who must, on the ensuing Thursday, deliver it to the clerk of the circuit court of the county, or, in his absence, to his deputy, and, in the absence of both, to the sheriff. The officer receiving such certificate shall, in the presence of the judges in attendance, between the hours of twelve and six of the same day, compare the different returns, and make out, in words, a certificate of the number of votes each candidate for elector received in the county, which certificate shall be signed by the clerk, his deputy, or the sheriff officiating, and be sealed with the seal of the circuit court of the county, and shall be, by such officer, delivered to the marshal appointed to convey the same to the capital of the state.

When state election shall be held.[2]—A general election is held on the second Tuesday in October in each second year, counting from the year 1870, for all officers to be chosen by the voters of the state, except township officers, and at such election all offices, except township offices,

[1] 1 R. S. 1876, 684. [2] 1 R. S. 1876, 436.

which are vacant, or which will become vacant before the next general election, must be filled.

Township elections.[1]—A township election is held on the first Monday in April of each second year, beginning with the year 1878, at which all existing vacancies in township offices, or which will become vacant before the next township election, must be filled.

County commissioners must establish precincts and designate places of voting.—The board of commissioners of each county must designate places of holding elections and establish precincts, and such precincts must be described by accurate boundaries.[2]

At least one place of voting must be designated in each township, and every township in which there is but one place of voting constitutes a precinct. Each township constitutes at least one precinct; but when public convenience requires it, a township may be divided into two or more precincts. There can be but one voting place in a precinct. The county commissioners may change the boundaries of any precinct in their respective counties, and may divide a precinct into two or more precincts, or may consolidate two or more precincts into one, and may change the place of voting in any precinct, when the public good requires it; but no such change, division, or consolidation shall be made after the June session of the board next preceding any election, and the action of the board will not be valid unless due notice of such change, division, or consolidation be given at least one month before any election, either by publication in the newspapers having the largest circulation in the county, or by posters set up in four of the most public places in the precinct. At the time of making the change the board should, by a proper order entered upon their record, direct how the notice shall be given.

Township trustees to be inspectors of elections.—Township

[1] Acts 1877, Reg. Sess., 58. [2] See Acts 1877, Special Session, 38.

trustees, in their respective townships, by virtue of their office, are inspectors of elections in the precincts in which they reside, and must, prior to the opening of the polls in their respective precincts, appoint as judges two qualified voters of such precinct, who shall have been freeholders and resident householders in such precinct for at least one year next preceding such election, and who shall be members of the two different political parties casting the highest number of votes at the next preceding election in such precinct, if there are different political parties in the precinct. No person can be appointed to sit on any board of elections who has anything of value bet or wagered on the result of any such election, or who is a candidate to be voted for at such election.

When commissioners must appoint inspectors.—When the board of commissioners designate more than one precinct in any township they must, at the June term next preceding any election, appoint in each additional precinct, as inspector of such election, a qualified voter thereof, and who shall have been a resident freeholder and householder in such precinct for at least one year next preceding such election, and may fill any vacancies that may occur in such office.

The inspector so appointed must perform the same duties in regard to elections and in the same manner required of trustees acting as such. The judges and inspector shall constitute the board of election, of which the inspector will be chairman.

Voting precincts in cities and towns.—In city and town elections, each ward constitutes a precinct, and the statute confers on the common council of cities, and the trustees of incorporated towns, the power to make such changes in the places of holding elections, and in the boundaries of precincts within the limits of such cities and towns, as public convenience may require; but no such changes or divisions can be made, without giving due notice at least

one month before any election, by publication in the newspaper having the largest circulation in the county, in which such city or town is situated, or by posters put up in four of the most public places in the precinct, for the same period of time. The statute provides further, that the city council or town trustees shall appoint three qualified voters of each precinct, one to act as inspector, and two as judges of elections, who shall have been freeholders and resident householders in such precinct for at least one year next preceding any election at which they may officiate.

The language used in the statute is, that such inspector and judges shall be appointed according to the regulation "hereinafter" specified; but as there is nothing upon the subject in the subsequent sections of the act, the legislature doubtless intended to use the word "hereinbefore," and it must have had in view the antecedent provisions of the statute, requiring the judges to be selected from opposite political parties.

Board to appoint clerks. The board of election must then appoint two clerks, who are qualified voters of such precinct, observing the same rule as to their politcal predilections, as is provided by law in the appointment of judges.

Voters may appoint when inspector does not appear.—Each inspector and judge of elections, shall attend at the place of holding elections in his township, or precinct, at or before eight o'clock in the morning of the day of elections, and should the inspector not appear at that hour, then the voters of such township, or precinct, who may be present, may appoint an inspector, who will at once appoint judges, and the judges will select two clerks.

Inspector and judges and clerks must take oath.—Before any election shall be opened the inspector and judges shall each take an oath, as follows:

"You do solemnly swear that you will support the constitution of the United States and of the State of Indiana, and that you will faithfully and impartially discharge the

duties assigned by law; that you will not knowingly permit any person to vote who is not qualified, and that you will not knowingly refuse the vote of any qualified elector, or cause any delay to persons offering to vote, further than is necessary to procure satisfactory information of the qualifications of such person as an elector." If no person is present authorized to administer oaths, the inspector will administer the oath to the judges, and then one of the judges to the inspector, and the inspector must then, before any votes are received, swear the clerks to faithfully discharge their duties according to law, and, after the organization of the board, may administer all necessary oaths which may be required in the discharge of the duties of the board. A majority of the board of judges may fill any vacancies occurring in the board or office of clerk. Great care should be taken by inspectors in the selection of judges, as well as by the board in the appointment of clerks, to secure persons of competent education and the requisite business qualifications.

Opening of polls to be proclaimed.—Before any ballots are received the board of judges must cause it to be proclaimed that the election is opened.

Blank forms to be furnished to inspectors.—It is made the duty of the auditors of each county to make out and deliver to the inspectors of the several election precincts of their respective counties, at least ten days previous to any election, a suitable number of blank forms of poll-books, containing one column headed "names of voters," and another headed "number of votes;" and also forms of election returns, with proper captions and forms of certificates and tally papers necessary to be used in all elections.

Ballot boxes.—The county commissioners must furnish to each inspector a ballot box in which ballots are to be deposited as they are received during the election. Inspectors are charged with the duty of taking care of ballot-

boxes, and, on going out of office, must deliver them over to their successor.

Each box must be provided with a sufficient lock, and must be locked before the opening of the election, and the key must be kept by one of the judges and the box must not be opened until the board is ready to commence counting the vote. Each box must have an opening in the lid sufficient to admit a single ballot at a time, with a slide inside to close the same.

When elections shall be opened and closed.—The election must be opened between the hours of eight and ten o'clock in the forenoon, and continue open until four o'clock in the afternoon, after which the board may close the election when all the electors have voted or have had an opportunity of voting, or when fifteen minutes have passed without a vote having been tendered; but the poll shall not be kept open after six o'clock, and the board must continue in session, without any adjournment or recess, at the place of election, from the time the polls are opened until all the votes cast have been canvassed and the result publicly proclaimed.

Party or candidate may have a representative at counting of votes.—Any political party having a candidate or candidates, to be voted for at any election, may be represented by two qualified voters of the precinct, who will be entitled to be in the room where the votes are being counted, and such persons will have the right to remonstrate against any fraud, or irregularity that may occur. They must, however, conduct themselves in a quiet, orderly manner, and must not unnecessarily interrupt the board in the discharge of its duties. They can not perform any duty, except to observe the counting of votes as witnesses, and remonstrate against any irregularity, and having done so, must permit the board to proceed with the discharge of its official duties, and they can not be present until the board is ready to begin counting. Such persons may be chosen by the central

committee, representing such party in the county, or township, in which the precinct is situated, or by the candidates to be voted for, or a majority of them, or by the voters of the respective parties entitled to vote in such precinct.

Description of tickets. — All ballots shall contain the name of the person for whom the elector intends to vote, written or printed thereon, and shall also designate the office to which each person so named is intended by him to be chosen. All ballots are required to be written or printed on plain white paper, without any distinguishing marks or other embellishment thereon, except the name of the candidates and the office for which they are voted for and inspectors are required to refuse to receive all ballots of every other description.

The supreme court has held, however, that inspectors will not be authorized to reject a ballot simply because it has a party name printed on the face thereof. Any elector may write his name on the back of his ticket if he wishes to do so.[1]

How votes shall be received.—When a person offers to vote, the inspector must pronounce his name in an audible voice, and if there be no objection made, he shall receive the ballot, and, in the presence of the other judges, put the same unopened into the ballot-box, when the name of the voter shall be again distinctly repeated by one of the other judges in the presence of the clerks, and the name of each elector as he votes, shall be entered and numbered by such clerks in the column of their poll lists headed "names of voters."

Challenge of vote.—Any person offering to vote, may be challenged by any qualified voter in such precinct, and if the person so challenged insists upon voting, and if the challenge be not withdrawn, the inspector of such election, or one of the judges thereof, shall administer to him, if he claim to be a citizen of the United States the following oath:

[1] 29 Ind. 308; 35 Ind. 275; 39 Ind. 363.

Citizen Voter's Oath.

"You do swear (*or* affirm) that you are a citizen of the United States, that you are over twenty-one years of age, to the best of your information and belief, that you have been a *bona fide* resident of this state for six months, immediately preceding this election, that you are now a *bona fide* resident of this precinct, that you are generally known by the name in which you now desire to vote, and that you have not voted and will not vote in any other precinct at this election."

If such person does not claim to be a citizen of the United States, the inspector of such elections, or one of the judges thereof shall administer to him the following oath:

Oath of Voter who is not a Citizen.

"You do swear (*or* affirm) that you have resided in the United States one year, and have declared your intention to become a citizen thereof, in conformity with the laws thereof, that you are over twenty-one years of age to the best of your information and belief, that you have been a *bona fide* resident of this state for six months immediately preceding this election, that you are now a *bona fide* resident of this precinct, that you are generally known by the name in which you now desire to vote, and that you have not voted and will not vote in any other precinct at this election.

In addition to the oaths of the persons whose votes are challenged, whether they claim to be citizens or not, the following oath or affirmation of some qualified voter in such precinct, who has been a freeholder and resident householder in such precinct, for at least one year next preceding such election, shall be required:

FREEHOLDER'S OATH.

You do swear [*or* affirm] that you are a qualified voter in this precinct, that you have been a freeholder and resident householder in this precinct for one year next preceding this election, and that [*name of voter*], who now desires to vote, has resided in this state for six months, immediately preceding this election, and is now a *bona fide* resident of this precinct.

Oath must be signed in presence of the board.—The statute requires that such oaths shall be written or printed, and be signed by the persons making them in the presence of the board, and that some member of such board shall administer the oath, and affix his *jurat* thereto, and the affidavit must be attached to, and be returned with, the poll lists to the clerk of the circuit court.

When these affidavits are made, it is the duty of the board to permit the person to vote without further evidence. If, however, the voter refuses to take the oath, the board may swear and examine other witnesses, and if satisfied from such testimony that the person offering to vote has the proper qualifications, his vote may be received.

Who are legal voters.—All male citizens of the United States, of the age of twenty-one years and upward, who have resided in the state during the six months immediately preceding the election, and every male person of foreign birth, of same age, who shall have resided in the United States one year, and in the state for six months immediately preceding the election, and shall have declared their intention to become a citizen of the United States, conformably to the laws thereof, upon the subject of naturalization, shall be entitled to vote in the township or precinct where they reside.

Persons in the miltary or naval service not entitled to vote.—No soldier, seaman, or marine, in the army or navy of the

United States, or of their allies, shall be deemed to have acquired a residence in the state in consequence of having been stationed therein, and no such soldier, seaman, or marine has the right to vote.[1]

Conviction of infamous crime.—No person shall be entitled to vote who has been convicted of an infamous crime, unless such conviction has been legally reversed or such person has been pardoned and legally restored to the rights of an elector by such pardon, or unless the period of his disfranchisement has expired.

Treason, murder, rape, arson, burglarly, robbery, manstealing, forgery, and perjury are, by statute, made infamous crimes. The courts may also adjudge disfranchisement as a part of the penalty for any of the following offenses:—larceny, receiving stolen goods, altering marks of animals, falsely personating another, keeping gaming apparatus, being a professional gambler, bribery, or for any violation of the act of March 8, 1873, for the protection of the ballot-box.

Challenge on account of conviction of crime.—If the vote of any person is challenged on the ground that he has been convicted of an infamous crime or disfranchised, the person offering to vote shall not be required to answer any questions respecting such alleged conviction, nor shall any proof thereof be received, other than the record of conviction or a duly authenticated copy thereof, except such proof as may be necessary to show that he is the same person named in the record, or that such person may produce to rebut the evidence of identity produced on behalf of the challenge.

The most difficult matter of fact to determine with reference to the right of a person to vote, and which perhaps most frequently arises, is the question of residence. It will be seen that no period of residence in the county, township, or precinct is required, hence a person who has resided in this state six months immediately preceding an

[1] Constitution of Indiana, art. 2, sec. 3; see 1 R. S. 1877, 26.

election, may remove from one county into another, with the intention of becoming a resident of the county into which he removes, and will have the immediate right to vote in the township or precinct in which he settles. It is sufficient, so far as the residence in the township or precinct is concerned, if the person offering to vote is a *bona fide* resident thereof at the time he offered to vote.

If a person removes from the state, with the intention of becoming a resident of another state, his residence in this state is lost although he immediately return, and he will not be entitled to vote until he has resided in this state six months.

It is expressly provided by the constitution that no person shall lose his residence in consequence of absence from the state on business of the state or of the United States.[1] An elector will not lose his residence because of temporary absence from the state on business or for pleasure, nor can a residence be acquired by a sojourn within the state for any temporary purpose whatever, without the intention of remaining for an indefinite time at least. Residence, without the intention of remaining, confers no political rights, and such resident can not vote in the precinct where such temporary sojourn is made.[2] Where a person leaves the state with the intention of returning, he will not lose his residence although the time of his return is not definitely fixed; nor will his residence be lost where he leaves the state, intending to return at a fixed period, but is prevented from doing so beyond such time by circumstances not under his control. If, however, a person leaves the state with the intention of returning, but afterward changes his intention, and determines to remain out of the state permanently, then his residence in this state is lost although he should subsequently return.

Counting votes, when commenced and how conducted.— When the polls are closed, the judges may open the ballot-

[1] 1 R. S. 1876, 26. [2] See note to French *v.* Lightly, 9 Ind. 475.

box and commence to count the ballots, or they may do so at any time after four o'clock, when they are at leisure.

The ballots shall be taken out carefully, one by one, by the inspector, who will open them as he takes them out, and read aloud the name of each person written or printed thereon, and the office for which each person is voted for; and he shall then hand the ballot to one of the judges, who shall examine it and hand it to the other judge, who shall string it on a thread of twine. If more persons are designated for any office than are to be elected, such part of the ticket shall be rejected, and shall not be counted for any of them. The statute provides that if two tickets are purposely folded together, both shall be rejected. This must be held to mean that if two tickets are folded together before being deposited in the box, whether by accident or design, neither shall be counted. No ticket shall be rejected for want of form, if it can be determined for whom the person voted and the office intended. No clerk or judge of any election shall vote after commencing to count the votes, nor make known to any one not a member of the board the result of their counting, until the election is closed.

Certificate of judges.—When the votes are counted, the board shall make out a certificate under their signatures, stating the number of votes each person has received, in words, and designating the office for which such votes were cast, and the certificate, together with one list of votes and one of the tally-papers, shall be deposited with one of the judges, as the inspector selected by the board of judges.

Board of canvassers.—The inspector or judge of each township or precinct, to whom such certificate, poll-books, and tally-papers shall have been delivered, shall constitute a board of canvassers, and must meet at the court-house of the proper county, on Thursday next succeeding the election, between the hours of ten o'clock A. M. and six o'clock P. M., and select one of their number as chairman,

the clerk of the circuit court to act as their clerk, and canvass and estimate the certificates, poll-lists, and tally-papers returned by each member of said board. The board must carefully compare and examine the papers entrusted to them, and estimate from them the vote of the county, a statement of which must be drawn up by the clerk, which shall contain the names of persons voted for, the office, the number of votes given in each township for each person, and to each person in the county, and the total number of votes given, and the statement must be signed by every member of the board, and with the certificates, poll-books, and tally-papers, delivered to the clerk to be filed by him in his office, where the same must be kept, subject to the inspection of any legal voter of the county or district. The other papers and the ballots must be kept by the inspectors six months, except in case the election is contested they must be kept till the contest is settled. The board must declare the person receiving the largest number of votes for any office to be filled by the voters of a single county, duly elected to such office, and certify the same in the statement above-mentioned. If two or more persons have the highest and an equal number of votes for the same office, to be filled by the voters of one county, the board must forthwith declare that no person is elected to fill such office, and shall certify the same in their statement, and when such statement is filed with the clerk, he must issue a writ for an election, or certify the fact to the proper tribunal to fill such vacancy. No tally-papers, poll-book, or certificate returned from any election by the judges thereof shall be rejected for want of form, nor because it is not strictly in accordance with the provision of the statute, if the same can be satisfactorily understood.

Compensation of election officers.—Each inspector, judge, and clerk of any election shall have credit for one day's work on the public roads of his district for every day he is employed in attending an election, but when the number

of votes at any poll exceeds three hundred, the county commissioners may make such additional allowance as may be just and reasonable.

If such inspector, judge, or clerk shall not be bound by law to work in person, or do not owe road tax, the county commissioners must allow seventy-five cents per day to each, and must allow each returning judge or inspector a reasonable compensation for his services as such.

Penalty for illegal voting.—If any person vote or offer to vote in any precinct in which he may reside, or who shall vote, or offer to vote, who is not by law entitled to vote, he shall be liable to be imprisoned in the state prison not less than one year for each offense.[1]

[1] For penalties for the violation of the election law see Acts 1877, special session, page 41, secs. 9 and 10; 2 R. S. 1876, page 475, secs. 55, 56, 58, 60, 61, and note 1, page 476; Id. 453, 454.

CHAPTER VII.

ENUMERATION.

When and by whom made.—The statute requires that an enumeration be made of the male inhabitants of the state over the age of twenty-one years, both white and colored, once in six years, counting from 1871. The trustees of the several townships are charged with the duty of making the enumeration, and must, between the first day of January and the first day of July of the years in which the enumeration is required to be made, ascertain the name and age of every male inhabitant, over the age of twenty-one years, residing at the time of making the enumeration in his township, and shall write such name or names in a book or books to be provided for the purpose, setting opposite each name the age of such persons, as nearly as the same can be ascertained, and he must put the names of the white and colored male inhabitants in separate lists, designated as "white male inhabitants" and "colored male inhabitants," respectively, and shall number the names in numerical order as they are written in the book or books.

Each trustee must, also, on or before the first day of July of each of the years in which the enumeration is to be made, arrange in alphabetical order, in another book to be provided for that purpose, the names of all persons who may have been enumerated as aforesaid; also setting opposite the name of such person his age as nearly as can be ascertained, and must attach to said book his affidavit, setting forth that the book contains, as he verily believes, an honest, true, correct and complete enumeration of all the male inhabitants over the age of twenty-one years resident at the time of taking said enumeration in his township, naming the township; that no person has been

enumerated or returned in said book who was not, at the time of making said enumeration a male inhabitant, over the age of twenty-one years, of said township, to the best of his knowledge, information, and belief, and that he has not knowingly or negligently omitted to enumerate and return in said book any male inhabitant, over the age of twenty-one years, who was a resident therein at the time of making said enumeration, which affidavit may be made before any officer authorized to administer oaths.

The book must then be returned to the county auditor on or before the first day of July.

Trustee may appoint assistant.—Township trustees may make the enumeration in person, or they may appoint, in writing, one or more assistants, and may assign to such assistants the whole or any part of the township. If a part of the township only is assigned, such part must be described in the appointment. The trustees may remove any assistant, at any time, and appoint another in his place.

Duties of assistant.—The assistant must, before entering upon the discharge of his duties, take and subscribe an oath to faithfully discharge his duties, and must make the enumeration, in all respects, as the trustee is required to do, and when completed he must make his return to the trustee, with his oath attached thereto, in a book to be furnished him by such trustee, showing that the book contains a correct enumeration of the male inhabitants in the township at the time of making the enumeration, or so much of such township as was assigned to him, describing such part of the township. The oath may be administered by the trustee or other officer authorized to administer oaths.

The affidavit must also show that no person has been enumerated or returned in such book who was not a male inhabitant of the township, or part thereof assigned to him, at the date of enumeration, and that he has not omitted

any such person who was an inhabitant thereof at such time.

Assistant to make return to trustee.—The book and the enumeration must be returned to the trustee at such time before the first day of July as the trustee may direct, and shall be filed in his office as one of the records thereof. The date of filing must be noted and the book must be at all times open to the inspection of the public.

Trustees may correct errors of assistants.—The trustee, may, at any time before making his return to the county auditor, correct any error or mistake, or supply any omission which may have been made by himself or any of his assistants in making the enumeration of the township, but such correction must be made without altering or mutilating the book and return made by the assistant, and if the township trustee shall discover any such error, mistake, or omission, after having made his return to the county auditor, it is his duty, immediately upon the discovery of such error, mistake, or omission, to make and sign a statement in writing, to be verified by his affidavit, and to be, without delay, transmitted to the auditor of the county, setting forth the facts in detail in relation to such error, mistake, or omissiion, and wherein such error, mistake, or omission consists; and it shall be the duty of the auditor to attach said communication to the original book returned by the township trustee, and such communication shall be treated as a correction or amendment of such book.

Auditor to give notice of return of enumeration.—As soon as the trustees have made their returns, the county auditor must give notice thereof in two newspapers of the county, if so many are published in the county, and, if not, in one newspaper, that the enumerations are subject to inspection at his office, and inviting an examination thereof, with a view to the correction of any errors, mistakes, or omissions therein, and stating the number of male inhab-

itants, over the age of twenty-one years, in each township, and in the county, according to the enumeration. If no newspaper is published in the county, the sheriff must post the notice, in the form of printed hand-bills, at the door of the court-house, and of the clerk's, auditor's, recorder's, and treasurer's office of the county, and in three public places in each township of the county.

Auditor may correct mistakes.—The auditor may correct any mistakes and omissions, and, for the purpose of determining any questions that may arise as to such mistakes or omissions, may issue subpenas for witnesses, and examine them under oath. The corrections must be made in a book to be provided by the auditor, and not otherwise, as provided by statute.

Penalty for violation of official duty.—If any officer, charged with the performance of any duty, under the enumeration law, shall make any false affidavit in reference to any of his official acts, he will be deemed guilty of perjury, and if any such officer shall fail to perform any of his official duties, within the time prescribed by law, he shall, for every such offense, forfeit and pay not less than fifty, and not more than five hundred dollars, to which may be added imprisonment in the county jail not exceeding six months; and, if any such officer shall be guilty of any fraudulent act or omission in relation to such duty, he shall, for every such offense, forfeit and pay not less than one hundred, nor more than one thousand dollars, to which may be added imprisonment, not exceeding six months, and the grand jury has jurisdiction of such offenses.

Auditor of county to furnish blanks.—It is the duty of the auditor of state to furnish the forms necessary to be used by trustees and their assistants in taking the enumeration, and county auditors must procure at the expense of their respective counties, all the books and blanks, prepared according to the forms prescribed by the auditor of state,

which will be necessary to enable trustees to make the enumeration, and furnish the same to such trustees. Each trustee is also entitled to receive from the county auditor a copy of the enumeration law.

CHAPTER VIII.

ESTRAYS AND ARTICLES ADRIFT.[1]

Estray property must be advertised.—Any person taking up any estray horse, mule, ass, sheep, goat, hog, or cattle, or any article of value adrift, must, within five days thereafter, advertise the same in three of the most public places in the township where such property is taken up, stating the time of such taking up, and particularly describing the property.

The notice may be as follows:

Form of Notice of Estray Property.

Notice is hereby given that the undersigned on the 10th day of June, 1877, in York township, took up a stray cow, described as follows [*here describe fully*]. Said animal is at my farm in said township.

Charles Ward.

June 12, 1877.

When property must be reported to justice.—If, within fifteen days after such taking up, the owner does not claim the property, the taker-up must report the same to a justice of the peace of the township, and shall at the time make oath before such justice, that the marks, brands, or appearance of such property have not been altered by him, nor any other person to his knowledge, since the same became an estray, or adrift, except as is stated in his written report. If the property be a horse, mule, or ass, above two years old, he must also take the same to the pound of the county, if there be one, and keep the same therein from eleven o'clock A. M. to three o'clock P. M., on the first day of each of the

[1] 1 R. S. 1876, 462.

two succeeding terms of the circuit court of the county after the taking up of said estray.

FORM OF REPORT TO JUSTICE.

To WILLIAM ROBERTSON,
Justice of the Peace:

The undersigned reports, that on the 10th day of June, 1877, he took up a stray cow in York township, described as follows [*here describe as in the notices*]. That he has duly advertised the same, and that the owner of said property has not claimed the same, although fifteen days have elapsed since said animal was taken up. [*If the marks or appearance of the property have been changed it must be stated.*]

CHARLES WARD.

August 12, 1877.

FORM OF AFFIDAVIT TO BE ATTACHED TO REPORT.

State of Indiana, Dearborn County, ss:

Charles Ward, being duly sworn, says that the marks and appearance of the cow, in the above report described, have not been altered by him, nor by any person to his knowledge [*or if any change has been made, add*], except as in said report stated.

CHARLES WARD.

Subscribed and sworn to, etc.

Justice must issue warrant to appraisers.—The justice of the peace must issue his warrant to three householders of the neighborhood, not of kin to the taker-up, unless that number of persons, not of kin, can not be found in the township, directing any two of them to appraise such property, which they must do, and report their appraisement to the justice. Their report must clearly describe the property, and state their valuation thereof, and they must, under oath, declare that such description and appraisement were made without partiality, favor, or affection. Each appraiser is allowed a fee of fifty cents.

FORM OF WARRANT TO APPRAISERS.

State of Indiana, Dearborn County. ss:

TO JAMES M. BLASDEL, WILLIAM EWBANK, AND ROBERT HARGITT:

Whereas, Charles Ward, on the 10th day of June, 1877, took up a certain stray cow, in York township, and has duly advertised the same, and the owner has not claimed said property; therefore, any two of you are hereby required to appraise said animal, and make report to me, under oath, of your appraisement, clearly describing the same, and giving your valuation thereof.

Given under my hand, the 26th day of June, 1877.

WILLIAM ROBERTSON,
Justice of the Peace.

FORM OF REPORT OF APPRAISERS.

State of Indiana, Dearborn County:

TO WILLIAM ROBERTSON,
Justice of the Peace:

The undersigned, two of the appraisers named in the warrant hereto attached, report that said animal is described as follows [*here give particular description*]; and that we have appraised said cow at the sum of thirty dollars.

JAMES M. BLASDEL,
WILLIAM EWBANK,
Appraisers.

FORM OF OATH TO BE ATTACHED TO REPORT.

State of Indiana, Dearborn County:

James M. Blasdel and William Ewbank, being duly sworn, on oath state that the appraisement and description in the foregoing report were made without partiality, favor, or affection.

JAMES M. BLASDEL,
WILLIAM EWBANK.

Justice must make report to clerk of circuit court.—The justice must report to the clerk of the circuit court of the county, a copy of the description and appraisement thereof, and must transmit, with such report, a fee of fifty cents. The clerk will enter such description and appraisement in a book kept by him for that purpose.

When property must be advertised in newspaper.—If the property estray or adrift exceeds in value ten dollars, it must be advertised in some newspaper of the county, if there be one; if not, in the paper in the county nearest thereto having one, and the clerk of the circuit court must forward to the printer a copy of the register thereof, marked outside "Estray Paper," together with a fee of one dollar.

Where property shall belong to taker-up.—In all cases where the provisions of the estray laws have been complied with, property adrift, not exceeding in value twelve dollars, unclaimed or unproven by the owner within ninety days after taking up, and other estray property, not exceeding in value ten dollars, and unclaimed and unproven by the owner within one year after the taking up, shall become the property of the taker-up.

When to be reported to justice of the peace.—If the appraised value of the property adrift exceeds twelve dollars, or animals estray, other than horses, mules, or asses, exceeds ten dollars, in either case unclaimed or unproved, the first within ninety days, and the latter within six months, of the time of taking up, the taker-up shall report the same to some justice of the peace of the township, within five days after the expiration of the time specified. This report may be similar in form to the report made to the justice in the first instance, and need only be changed to conform to the facts.

Justice must issue his warrant to sell property.—The justice to whom such property is reported, must thereupon issue his warrant to some constable of the township, direct-

ing him to sell the property at public auction, giving ten days' notice, in writing, of the time and place of sale, and giving a description of the property to be sold. The constable must return the order and the proceeds of the sale to the justice, within five days after the sale, retaining one dollar for his services.

FORM OF WARRANT TO CONSTABLE.

State of Indiana, Dearborn County, ss:

TO ANY CONSTABLE OF CENTER TOWNSHIP:

Whereas, On the 5th day of July, 1877, , took up, adrift in the Ohio river, in said township, a skiff [*describe by giving marks and appearance*], and said property was duly appraised at the sum of fifteen dollars; and although more than ninety days have elapsed since said property was taken up, the same has not been claimed or proven by the owner.

You are therefore commanded to sell said property at public auction, to the highest bidder for cash in hand, after first giving ten days' notice of the time and place of sale, and make due return of your proceedings herein.

Given under my hand, the 7th day of October, 1877.

ISAAC H. CARBUAGH,
Justice of the Peace.

When and to whom justice must pay money.—Upon the return of the warrant and proceeds of the sale by the constable, to the justice of the peace, the justice must immediately pay over to the county treasurer the proceeds of the sale, after deducting the proper amount to be paid to the taker-up, fifty cents for his own fee, and five cents for every mile that it is necessary for him to travel in making his return, and he must take from the treasurer duplicate receipts, one to be filed with the clerk and the other with the auditor.

Property exceeding in value twenty dollars.—Any horse,

mule, or ass, taken up, the appraised value of which exceeds twenty dollars, and which shall remain unclaimed or unproven at the expiration of twelve months from the time of taking up, shall be, by the taker-up, delivered to the sheriff of the proper county, on the first day of the term of the circuit court next after the expiration of such time, and shall be, by said sheriff, sold at public sale, and after retaining one dollar for his services, and paying to the taker-up his charges, as provided by law, the sheriff shall pay the proceeds of such sale to the treasurer of the county within five days thereafter, taking from the treasurer duplicate receipts, and filing one of the same in the clerk's office and the other with the county auditor.

Estray fund.—All sums paid to the county treasurer under the provisions of the estray law, shall be by him entered to the credit of the county, under the head of estray fund.

Compensation of taker-up.—The taker-up shall be entitled, for taking up, for each horse, mule, or ass, one dollar; each head of neat cattle, fifty cents; each sheep, goat, or hog, above six months old, ten cents; but where the owner reclaims and proves his property before the same is posted, the taker-up shall only be allowed one-half of such compensation.

Compensation for taking up property adrift.—The taker-up of property adrift shall be allowed a reasonable sum, to be determined by some justice of the peace of the township; but either the claimant or the taker-up thereof, may, if they choose, have a jury to determine what amount shall be just and reasonable for taking up and taking care of such property; the justice, constable, and jury shall be allowed the same fees as in other cases.

What fees are to be paid by taker-up.—The taker-up of property exceeding three dollars in value, shall pay to the justice, at the time of reporting, fifty cents for the justice, fifty cents for the clerk, and one dollar for the printer,

where printing is required; but if under three dollars, the justice shall make no return to the clerk, and his fee shall be twenty-five cents only.

Register of estrays.—The clerk of the circuit court shall keep a register of estrays; where several estrays or articles adrift are taken up by one person, there shall be only one entry and one advertisement, one fee of the clerk, and one of the justice.

Compensation to taker-up for keeping property.—Upon property sold or reclaimed, the taker-up shall be allowed such compensation for keeping such property as shall be, by the jutice before whom the proper proceedings are had, deemed just and reasonable, and such taker-up shall keep account of the time any estray animal is kept by him, and make oath to the same.

When animal has been worked.—If any animal is taken up, and worked by the taker-up, a reasonable compensation shall be allowed for the services of such animal, to be deducted from the keeping; the taker-up, if required, shall verify, under oath, the time he has worked said animal.

How owner may redeem property.—At any time before sale, the owner may have his property by proving the same before the justice of the township where taken up, and paying charges. And at any time within two years after sale, but not later, he may reclaim the money paid into the treasury, by proper proof before the county auditor.

When certain animals must not be taken up.—No person shall take up any horse or stock except at his place of residence; or drive the same out of the woods and take them up; nor shall any animal be taken up between the first day of April and the first day of November, unless the same be found in the inclosure of the taker-up. If, however, the animal is in the act of escaping from the owner, it may be taken up at any time wherever found.

Property not to be taken out of the county.—The taker-up of

an estray animal, until he become owner, shall not take, or suffer to be taken, out of the county, any property taken up, for more than three days at any one time.

Fatted hogs may be killed.—Fatted hogs taken up may, at the option of the taker-up, be killed one month after posting; but, in that case, the taker-up shall, forthwith, after killing the same, pay their appraised value, deducting costs and charges (to be liquidated as in other cases), to the county treasurer, for the use of the owner.

Stock hogs.—Stock hogs taken up may, at the option of the taker-up, be by him paid for six months after posting, at their appraised value, deducting costs and reward for taking up, but no allowance for keeping the same.

Articles adrift.—Whenever, upon any navigable waters within or bordering upon the state, the cargo which may have been shipped as freight, or the baggage of passengers, or part thereof, of any vessel may be cast adrift, afloat, or ashore, by any wreck, accident, or mischance of such vessel, such cargo, or part thereof as may have been taken up and secured by any person, may be reclaimed by the captain, clerk, or officer navigating such vessel, the supercargo, owner, or agent of the owner of such cargo or baggage who may be the claimant thereof.

When property adrift must be surrendered.—Such property shall be surrendered to such claimant upon proof or circumstance satisfactory to the taker of the property of the right of such claimant having a general or special property, agency, or control therein, upon the payment by such claimant of reasonable compensation for service or expenses in the taking and preserving such property.

Upon refusal to surrender property, owner may sue.—Should such person, or the person having possession of the property, refuse to restore it to the claimant, or claim unreasonable compensation for the services and expenses in its taking up and preservation, the claimant may have a summary

proceeding before any disinterested justice of the peace for the recovery of such property.

Affidavit to be filed before justice.—The claimant must file before the justice an affidavit of the facts attending the wreck or accident, enumerating, as nearly as possible, the articles or packages withheld, his right to receive the same; and, thereupon, the justice shall summon the person taking up, or in possession of such property, to appear before him, at a place, and at the earliest practicable period, not more than three days, to be designated in the writ.

The affidavit may be substantially as follows:

FORM OF AFFIDAVIT FOR RECOVERY OF FREIGHT.

State of Indiana, Dearborn County:

Philip Emmert, being duly sworn, on oath states that he is the owner of two boxes of goods, marked [*here give marks or brands*], which boxes were found, on the morning of October 2, 1877, cast ashore on the beach of the Ohio river, about one-fourth of a mile below the mouth of the Miami river, in Lawrenceburgh township, in said county, by one John Jones; that said boxes of goods were shipped to deponent on the first day of October, 1877, on the steamer Minnie, from the port of Cincinnati, Ohio, to be delivered to this deponent at the wharf at Lawrenceburgh, Indiana, and that, on the night of said last named day, said steamer, while descending the Ohio river, collided with the steamer Water Witch, which was ascending said river, and said steamboat Minnie was thereby disabled from proceeding upon said trip, and was compelled to run ashore, and said boxes of goods were thrown upon the beach to prevent their loss. He further says that he has tendered to said John Jones one dollar, for his compensation for taking care of said goods, and is still ready and willing to pay such sum, and which is all that he is entitled to receive for his services, yet the said John Jones wrongfully detains said

property from deponent, and he asks judgment for the recovery thereof.

PHILIP EMMERT.

Subscribed and sworn to, etc.

Such justice shall hear and determine the matters in controversy, in the most speedy manner practicable, as other proceedings are had before him, and may fix the amount of compensation to be paid by such claimant, and award a writ, or writs, for the delivery of the same forthwith to such claimant, upon payment of such compensation. The writ for the delivery of the property should be directed to the constable, commanding him to deliver the property to the claimant.

The trial will be governed by the usual rules of procedure before justices, except as to continuances, and appeals may be taken by either party upon the same terms, and under the same regulations as appeals in other cases are taken. The meaning of the statute seems to be that no continuance should be granted, but that the justice must at once proceed to hear the evidence and dispose of the case without delay.

Penalty for violation of estray laws.—If the taker-up of estray property take or suffer to be taken out of the county where taken up for more than three days at a time, or shall convert it to his own use before the title is vested in him, or if he willfully violate any provision of the estray law, he will be subject to a fine of not exceeding one hundred dollars, or to imprisonment in the county jail not exceeding six months.[2]

[1] Acts 1877, Special Session, 43. [2] 2 R. S. 1876, 475.

CHAPTER IX.

FENCES.

What is a lawful fence.[1]—The statute provides that any structure, hedge, or ditch, in the nature of a fence, used for the purpose of inclosure, and which is such as good husbandmen generally keep, and which shall, upon the testimony of skillful men, appear to be sufficient, shall be deemed a lawful fence.

It has been held that the kind of fence intended by the statute is not such as may be kept by farmers in particular localities. Hence, in a case where a party sought to show that his fence was located in a place subject to overflow in times of high water, and where all fences were removed during the winter to avoid spring freshets, and that, although not such a fence as good husbandmen generally keep, yet was as good as the fences kept in that locality, it was held that such fence was not lawful.[2]

When owners of animals are liable for damages.—If, in any township where domestic animals are not permitted to run at large, by order of the board of county commissioners, any such animals break into any inclosure, or wander upon the lands of another, the person injured thereby may recover the amount of damages which such animals may do, from the owner thereof, whether the fence of such injured person be lawful or not. But, in townships where such animals are permitted to run at large, it must be shown, in order to make the owner liable for damages, that in entering upon the premises the animals broke through a lawful fence.[3]

Outside fences only required to be lawful.[4]—The provisions

[1] 1 R. S. 1876, 495.
[2] 32 Ind. 437.
[3] Acts 1877, Special Session, 42.
[4] 9 Ind. 290; 33 Ind. 497.

of the statute, requiring persons to maintain lawful fences, applies to outside structures only. The law imposes upon owners of domestic animals the duty of keeping them upon his own premises, except where he may lawfully permit them to run at large upon the public common; and if he suffers them to go from his inclosure, upon the lands of another, he will be liable for the damage they may do.

When animals may run at large.—The owner of domestic animals may, within the limits prescribed by the order of the board of commissioners, permit them to go upon the public common and uninclosed land, and he will not be liable for any damage they may do by trespassing upon inclosures, unless they break through a lawful fence, as has already been explained.

When animals may be taken up.—When any domestic animal shall break into the inclosure of any person, such person, without regard to the season of the year, may take up such animal as if an estray, whether the owner be known to him or not; and if the owner be known to the person taking up the animal, and he can be immediately found, notice of such taking up should be given to the owner within twenty-four hours. Such notice need not be in writing.

When taker-up must advertise.—If the owner of such trespassing animals be not known to the taker-up, he must, within five days, advertise the same in writing in three of the most public places in the township where such property is taken up, and giving a particular description of the animal, as in case of an estray. Before posting or advertising, the statute requires the taker-up, to procure from two disinterested freeholders, an examination and appraisement, and a certificate of the amount of damages, and their reasonable compensation for making the appraisement. The certificate of the persons called on to appraise the damages may be in the following form:

FORM OF APPRAISERS' CERTIFICATE.

State of Indiana, County of Dearborn, Miller Township:

We, the undersigned, disinterested freeholders, do hereby certify that we have, at the request of Perry Carter, made examination of the damage done to his premises, in Miller township, in said county, by three cows found trespassing thereon, on the 9th day of August, 1877, and we assess his damage as follows:

Damage to growing corn,..... ...$5 00
" " Fruit trees,..... 2 50

Total,..... .....$7 50

And we further certify, that one dollar each is reasonable pay for our services for making such assessment.

Witness our hands, this 10th day August, 1877.

CHARLES W. STEVENS.
JAMES MCKINNEY.

The advertisement may be as follows:

FORM OF ADVERTISEMENT.

Notice is hereby given, that on the 9th day of August, 1877, I took up the following animals trespassing on my inclosure, in Miller township, to wit: Three cows [*here describe them*], and that the damage done by said animals has been assessed at seven dollars and fifty cents, and the sum of two dollars has also been assessed as compensaton to the appraisers of the damage. The owner of said animals can have them on payment to me of said damages, costs, and expenses.

PERRY CARTER.

August 12, 1877.

How trespassing animals may be reclaimed.—The owner of a trespassing animal may reclaim the possession thereof from the taker-up, by proving his property and paying

costs, as in cases of estrays, and also the damage done, and the costs of assessment, at any time within five days after the owner of the animal has notice of the assessment of damages he may controvert the amount thereof, and also deny the fact of the trespass, by going before any justice of the peace of the township, and filing a statement of the facts, which may be substantially in the following form, which may be varied to conform to the facts in each particular case:

Thomas Mason
v.
Tyler Annis.
} Before Sebastian Green, Justice of the Peace.

Thomas Mason complains of Tyler Annis, and says, that on the 5th day of June, 1877, the defendant took up three cows, the property of the plaintiff, alleged to be trespassing upon his premises, and that the defendant has caused the alleged damage done to his premises to be assessed, and such damages have been appraised at seven dollars and fifty cents, and the sum of two dollars has been assessed as the compensation for the appraisers, and that he received notice of such assessment within five days past, and that defendant has possession of the said cattle, and refuses to surrender the same until said damages and fees are paid. The plaintiff denies such alleged trespass, and controverts the amount of damage assessed as aforesaid, and the plaintiff says, that by reason of the wrongful and unlawful taking up and detention of said cattle, he has sustained damage in the sum of ten dollars, and prays judgment for the recovery of said property, and for damages.

THOMAS MASON,
Plaintiff.

Proceedings before justice.—Upon the filing of the complaint, the justice must issue a summons for the defendant, and docket the cause for trial as in other cases, and either

party may demand a jury. If damages are assessed, the owner must pay such damages, and the costs, before he can recover his property. If the verdict or finding be that the trespass was not committed by the animals taken up, judgment must be rendered against the person taking up the animals, and for such damages as may be assessed, and for costs. If the justice or jury trying the cause find that the fence through which the animals broke was not lawful, the animals must be released, and the occupant of the inclosure must pay the costs and such damages as may be assessed.

Damages to be retained when animal is sold.—When trespassing estray is sold, the taker-up, in addition to the usual costs and allowances in the case of estrays, may retain, out of the value of such estrays, the damages sustained by such trespass, and the costs of their assessment.

Partition fences.—The statute further provides, that a partition fence shall be lawful, if it be sufficient to inclose and restrain sheep, unless by the mutual agreement of the parties interested, they agree to build a fence only to restrain or inclose horses, mules, or cattle.

Sufficiency of partition fence, how determined.—The question of the sufficiency of a partition fence must be determined by the testimony of skillful men, keeping in view the provisions of the statute, or the agreement of the parties who built or are using the fence, if they have made any agreement on the subject. If the animals intended to be inclosed or restrained by such partition fence, break through the same into the adjoining inclosure, the person injured thereby would be entitled to recover the damage done, if the fence be such as is required by statute or the agreement of the parties.

Notice to repair partition fence.—When a partition fence becomes insufficient, and either party, whose duty it is to do so, fails to make repairs, the other may give him three days' notice that he will, at a specified time, on a day

named, call on two disinterested freeholders to examine the fence, and, if they deem it insufficient, to assess the amount necessary to make it sufficient.

Although the statute does not, in terms, require that the notice shall be in writing, it is probably so intended, and a written notice should be given in all cases. The following will be sufficient:

FORM OF NOTICE TO REPAIR FENCE.

TO EDWARD HAYES:

Take notice that, on the 5th day of August, 1877, at two o'clock P. M., I will call on two disinterested freeholders to examine the partition fence dividing your lands from mine, commencing at [*here state the point of beginning and the place of termination, so the fence or part thereof to be examined will be accurately described*], and, if they deem it insufficient, to assess the amount required to make it sufficient.

AMBROSE E. NOWLIN.

August, 1, 1877.

The notice may be served by the party himself or any other person. A copy of the notice should be kept by the party serving it.

When party serving notice may make repairs.—If within fifteen days after the assessment has been made, the person to whom the notice has been given does not repair the fence, the complaining party may do so, and will have a right of action for the amount of the damages assessed, before any justice of the peace of the township.

The complaint, in such cases, may be as follows:

Ambrose E. Nowlin }
v. }
Edward Hayes. }

Ambrose E. Nowlin complains of Edward Hayes, and says that he and the defendant are owners of a certain

partition fence, dividing lands owned by them, situated in Lawrenceburgh township, and in the northeast quarter of the northwest quarter of section number one, town five range one west; that the plaintiff and defendant occupy the lands on both sides of said fence, and that on the 2d day of August, 1877, said fence had become out of repair and insufficient, and on said day the plaintiff served upon the defendant a notice that he would, on the 5th day of August, 1877, at two o'clock P. M., call upon two disinterested freeholders to examine said fence; and such appraisers having been duly called upon did, on said last-named day, make such examination, and found the same insufficient, and assessed the amount necessary to make it sufficient at ten dollars, and that the defendant failed and neglected, for fifteen days, to repair said fence, and the plaintiff made said repairs. Wherefore he demands judgment for one half of said sum, to wit: five dollars, and ten per cent. damages thereon.

AMBROSE E. NOWLIN,
Plaintiff.

Upon the filing of the complaint the justice must issue a summons for the defendant, and docket the cause for trial as in other cases. If, by contract between the parties, the defendant is to keep the entire fence in repair, the plaintiff will, of course, be entitled to recover the whole amount of the assessment; and if, by agreement, each party is to keep in repair a certain portion of the fence, the appraisers need only examine such portion of the fence as the defendant is required to keep in repair, and the plaintiff will be entitled to recover the whole of the appraisement.

Appraisement may be shown to be erroneous.—Upon the trial of the cause the defendant may impeach the appraisement, and the court or jury may hear the evidence and determine the damages, as shown by the testimony of witnesses, without regard to the appraisement. The ap-

praisement will be presumed to be correct, however, until the contrary is shown.

Defendant may tender damages and costs.—If, before the trial, the defendant will tender to the plaintiff the costs of assessment, and an amount of money in addition, in payment of the damages, and the plaintiff proceeds with the trial, and do not recover more damages than the amount tendered to him, he will only be entitled to a judgment for damages, and must pay the costs of the trial accruing after the tender.

When inclosure becomes a partition fence by building another fence.—When, by the inclosure of land previously uninclosed, a fence already erected becomes a partition fence between the owners or occupants of adjoining lands, the person making such inclosure must pay the owner of the fence the value of one-half thereof, as estimated by the owner.[1]

The owner of the fence must estimate the value of one-half the fence, and notify the party making the inclosure of the amount thereof, and demand payment, and, upon his refusal, may maintain an action against him in any court having jurisdiction. But if the defendant tenders to the plaintiff, before the trial, the costs accrued up to the date of tender, and an amount equal to, or exceeding, the damages recovered upon the trial, the plaintiff can only recover the damages, and must pay the costs accruing after the date of the tender.

No person compelled to have partition fence.—No person inclosing land that has previously been open, can join his fence to that of another, except by the consent of the owner of such fence. No one can be required to become the owner of a fence, in common with his neighbor, unless he is willing to do so. He may permit the fence of another to be joined to his, and compel payment for one-half the value of his fence, as has been explained, but he may

[1] See 43 Ind. 447.

also prevent the fence of any other person from being joined to his altogether.

A person who will not consent to the establishment of a partition fence, must leave sufficient ground for one-half of a lane, or enough space outside of his inclosure for the construction of a second fence.

Notice of removal of partition fence.—If a person cease to use his lands, or shall lay open his inclosure, he can not lawfully take away any part of his inclosures which form a part of a partition fence between his lands and the lands of another person, until he shall have first given six months' notice to the person or persons who may be interested in the removing of such fence, of his intention to remove the same.

The statute formerly provided that no part of a partition fence should be removed by one party, if the other would pay the reasonable value of the part proposed to be removed, and, before the statute was amended, the supreme court held that some steps must be taken to ascertain the value of the fence before it could be removed.[1]

The right of a party to remove the portion of a partition fence belonging to him, after giving six months' notice, seems now to be absolute. No special form of notice is required. It should describe the fence, or part thereof, to be removed, and give the date when the removal is to be made.

Removal of fence built by mistake.—In reference to the removal of a fence built by mistake by a person on the lands of another, the statute provides as follows:

When any person shall, by mistake, erect any fence on the land of another, and when, by a line legally determined, that fact is ascertained, such person may enter upon such premises and remove the fence which he may have made thereon, within six months after such line has been run as aforesaid, upon his first paying, or offering to pay,

[1] 11 Ind. 126.

to the other party, reasonable damages for injury in passing over the soil in making such removal.

When the fence to be removed forms any part of a fence inclosing a field of the other party, with a crop thereon, such first person shall not remove the same, so as to expose such field, until such crop shall have been gathered and removed, or secured from further injury, or might, with reasonable diligence, so have been gathered and secured; then he may immediately remove such fence and materials, although more than six months have elapsed since such division line was run.

Act providing for recording marks of fencing.[1]—In order to facilitate the recovery of rails and fencing that may be removed by high water, the legislature, at the special session of 1877, enacted the following statute:

"It shall be the duty of the county commissioners to furnish a blank book to the recorder of the county, to be paid for out of the county fund, in which the county recorder shall keep a record of the marks of rails and plank fencing, which may be adopted by freeholders of such county. *Provided*, That it shall not be obligatory on the board of county commissioners to procure such a book of record until petitioned so to do by twenty freeholders of the county over which they preside.

The county recorder shall receive twenty-five cents for the recording of each mark, and no more, to be paid for by the person or persons having such mark recorded; and the recorder shall, in no instance, record two marks which may exactly correspond.

Any person or persons, having his or their rails or plank fencing marked and recorded, as herein provided, should such rails or plank fencing be removed, by high water and overflow, off their lands on to the land of another person or persons, such person or persons shall have the privilege of removing such rails and plank fencing on to their own premises at any time of the year: *Provided*, That they shall

be held responsible, and pay all damages that may be done to growing grain on the land from which such rails or plank fencing may be removed, or over which they may be hauled."

At the same session of the legislature there was also enacted a law authorizing the organization of companies for the purpose of inclosing, under one general fence, lands subject to overflow. Any number of persons, not less than five, interested in such lands, may avail themselves of the benefits of the act, and by complying with the provisions thereof, become a body politic and corporate, and as such construct a fence inclosing the land of all the members, by assessing the cost thereof upon such lands.[1]

[1] Acts 1877, Special Session, 44.

CHAPTER X.

HIGHWAYS.

What are highways.—The term "highway," as used in the statute, includes county bridges, and state and county roads, unless otherwise expressly provided.[1] It has also a broader meaning, but it is only proposed here to consider the statutory provisions in regard to public roads. Every street is a highway.[2] It has also been held that in this state a neighborhood road is a public highway.[3] It is not necessary that a highway should be established by authority, nor is it necessary that a road should be used as such for twenty years, to make it a public highway. The law seems to be that the unopposed use of a road for a much less time, even as short a period as four or five years, will be sufficient to entitle the public to use it as a highway. It seems to be settled that where land has been used for a highway for such a length of time that public accommodation and private rights might be materially affected by an interruption of such use, it may be inferred that the owner intended a dedication of the land to the public, for a highway.[4]

When a road has been used without interruption for twenty years, it is a public highway, and its width as used at the end of that time is the established width of the road.[5]

Public highways may be established in this state by order of the board of county commissioners of the county in which the road is located, by express grant, and by dedication arising by presumption from a continued use of the way by the public for a considerable period of time as a

[1] 2 R. S. 1876, 316. [2] 7 Ind. 9; 21 Ind. 277. [3] 33 Ind. 80.
[4] 10 Ind. 219; 8 Ind. 425. [5] 5 Ind. 459; 15 Ind. 226.

highway, with the knowledge of the owner of the land, and without objection on his part.[1]

Location, change, and vacation of highways.—When the location, change, or vacation of a highway, running in but one county, is desired, the statute requires that twelve freeholders of the county, six of whom shall reside in the immediate neighborhood of the highway proposed to be located, vacated, or the change to be made, shall petition the board of county commissioners of the county in which such highway is situated, or is to be located, for the location, vacation, or change of any highway, and such board, if they shall be satisfied that notice of such application has been given, by publication three weeks successively in a newspaper published in the county, or by posting up notice in three of the most public places in the neighborhood of such highway or change, at least twenty days before the meeting of the board at which such petition is to be presented, shall appoint three persons to view such highway.

PETITION FOR LOCATION OF A HIGHWAY RUNNING IN ONE COUNTY.[2]

To the Honorable Board of Commissioners of Dearborn County, State of Indiana.

The undersigned, resident freeholders of said county of Dearborn, respectfully petition your honorable board for the location of a public highway in the townships of Miller and York, in said county, as follows [*here describe the route of the proposed highway, setting forth clearly the beginning, course, and termination of the road.*] The said proposed highway will pass through the lands of [*here give the names of the owners, occupants, or agents of all the lands through which the said road will pass.*] And your petitioners further show that six of their number reside in the immediate neighborhood of such proposed highway; and

[1] 25 Ind. 352. [2] 17 Ind. 430.

that said highway will be of public utility and they pray that viewers may be appointed to view such highway.

July 1, 1877. LORENZO D. LEMING,
THOMAS LANGDALE,
and others.

It is not necessary that the petition should show that twelve of the signers are freeholders of the county, or that six of them reside in the immediate neighborhood of the proposed road, but such statement is proper.[1] The board of commissioners must, however, be satisfied, and their record must show, that the petition is in fact signed by the required number of such persons, before they can proceed to act upon it. Care should be taken to clearly and accurately describe the route of the proposed road, and to give the names of all the owners, occupants, or agents of lands over which it will pass.[2] Any error in these respects may result in the defeat of the petition after a large amount of costs has accumulated.

The notice that such petition will be presented to the board of commissioners may be as follows:

NOTICE OF PETITION.

Notice is hereby given, that a petition will be presented to the board of commissioners of Dearborn county, at their September session, 1877, for the location of a highway in the townships of Miller and York, in said county, as follows [*here describe the proposed highway, and also give the names of the owners, occupants or agents of the lands through which the road will pass as in the petition.*]

The notice may be signed by the petitioners, or some of them, but it is not necessary that it should be signed by any one.[3]

Duty of viewers.—The auditor of the county shall issue a precept to the sheriff thereof, commanding him to notify

[1] 20 Ind. 270. [2] See 24 Ind. 325. [3] 29 Ind. 324.

such viewers of the time, place, and object of their meeting, and such viewers, at such time and place, after having taken an oath, before some officer authorized to administer oaths, to faithfully perform their duties, shall proceed to view the highway, or such change; and if they shall deem the highway to be located, or the change to be made, of public utility, they shall lay out and mark the same on the best ground, not running through any person's inclosure of more than one year's standing, without the owner's consent, unless, upon examination, a good way can not otherwise be had. If the road is laid out upon the line dividing the land of two individuals, each shall give half the road. If such viewers are of opinion that the proposed highway is not of public utility, they must report accordingly, and the petition will be dismissed.

Report of viewers, and proceedings thereon.—Such viewers, or a majority of them, shall make a report of their proceedings at the ensuing session of the board of commissioners of the county in which such location, change, or vacation may be made, giving a full description of such location, change, or vacation, by routes and bounds, and by its course and distance, except that in case of the vacation of a road, or any part thereof, such description only as will designate it clearly, shall be required; and, in such case, a copy of the order vacating such highway shall be transmitted by the proper auditor to the trustees of the townships in which such vacated highway is situate, who shall cause the supervisors thereof to be notified accordingly.[1]

Duty of commissioners if no objection is made.—If no objection be made to such proposed highway, vacation, or change, the board shall cause a record thereof to be made, and shall order the same to be opened and kept in repair, which order shall be transmitted to the trustees of the townships in which such location or change is made, and the trustees shall cause a copy of such order to be entered

[1] 27 Ind. 233; 34 Ind. 337; 12 Ind. 303; 4 Ind. 459.

at length on their record book, and notice thereof to be given to the proper supervisor, to work such location or change.[1]

Person aggrieved may remonstrate.—If any person through whose land such highway or change may pass, shall feel aggrieved thereby, such person may, at any time before final action of the board thereon, set forth such grievances by way of remonstrance, and the board shall thereupon appoint three disinterested freeholders, as reviewers, and assign a day and place for them to meet.

Duties of reviewers.—Such reviewers, having five days' notice, to be given by the party remonstrating, shall meet at the time and place designated, and take an oath faithfully to discharge the duties assigned them, and shall then or on any other day, to which a majority may adjourn, prior to the next session of such board, proceed to review the proposed highway, and assess the damages, if any, which the objector may sustain from such highway or change being opened, vacated, or continued through his lands, and shall report the same to the ensuing session of the board.

Report of viewers.—If a majority of the viewers assess and report damages in favor of the objector, and the board shall consider the proposed highway, vacation, or change to be of sufficient importance to the public, they shall order the costs and damages to be paid out of the county treasury; but if a majority report against the claim for damages the objector shall pay the costs; and when payment of damages is made, as herein provided, such highway shall be recorded and ordered to be opened and kept in repair, after notice to the proper trustees.[2]

When another viewer may be had.—If it shall be made to appear to the board that the damages assessed are unreasonable, they may set aside such assessment and order

[1] 8 Ind. 9; 9 Ind. 103; 30 Ind. 364. [2] 1 Ind. 201.

another review, under the same regulations as provided in case of the first review.

Duties of board when objection is made that road is not of public utility.—If any one or more freeholders residing in the county, along such highway, vacation, or change, shall object to the same at any time before final action thereon, as not being of public utility, other reviewers may be appointed, who shall proceed, on a day to be by them designated, after having made an oath faithfully to discharge the duties assigned them, to examine the proposed highway, and shall make report to such board, at their next session, whether or not, in their opinion, the highway, vacation, or change will be of public utility.

Report of viewers as to utility of road.—If a majority of the reviewers last named report against the public utility of such highway, the same shall not be established unless the petitioners will open and maintain it at their own expense; but if they report favorable thereto, the objector shall pay the costs of the reviewers, and the highway shall be recorded and ordered to be opened and kept in repair.[1]

Duty of person procuring change of highway.—Whenever any person shall procure the establishment of a highway, private or public, by change of one already established on or across his land, before the same shall be received by the proper supervisor as such, it shall be made as passable as the old highway, or as nearly so as the nature of the case will admit, of which fact the trustee of the township in which the change is made, shall be duly satisfied before the supervisor shall be required to keep it in repair.

Highway not to be opened unless damages paid or deposited.—No such highway shall be opened, worked, or used, until the damages assessed therefor shall be paid to the persons entitled thereto, or deposited in the county treasury for their use, or they shall give their consent thereto in writing filed with the auditor of the county.

[1] 24 Ind. 325.

Appeal may be taken.—Any person aggrieved by any decision of any board of commissioners, may appeal therefrom to the circuit court of the county, upon his filing a bond, with surety and penalty, to be approved by the auditor of the county, conditioned for the due prosecution of such appeal, and the payment of costs, if cost be adjudged against him; and in case proceedings shall be had in more than one county, the auditors of each county, on being notified of such appeal by the auditor of the county in which the appeal is taken, shall transmit to the clerk of the court to which the appeal is taken, all the proceedings in such counties; and upon the determination of such appeal, the clerk shall notify the auditors of all the counties interested thereof.

Width of highways.—No county road shall be less than thirty feet wide, and no township road shall be less than twenty-five feet wide; and the order for laying out of any highway shall specify the width thereof.

How highway on county or township line may be worked.—Public highways established on a county or township line, shall be opened and repaired by the supervisors of the proper road districts on each side thereof, and by the joint labor of the hands in each of such districts in each county or township.

Fences to be moved when new road is laid out.—Whenever any public highway shall have been laid out through any inclosed land, the supervisor must give the occupants of such land, or the owner, if a resident of the road district, sixty days' notice, in writing, to remove his fence; but the owner or occupant will not be compelled to move the fence between the first day of April and the first day of November; and if such fence is not removed pursuant to such notice, such supervisor shall cause the same to be done.

When credit on highway tax may be given for moving fence.—If the owner or occupant shall not have been al-

lowed damages for the laying out of such highway upon his land, the supervisor shall give the person removing the fence credit on his highway tax for any amount that the supervisor shall deem just.

When highway will be deemed vacated.—The statute relating to highways contains the following provision:

Every public highway already laid out, or which may hereafter be laid out, and which shall not be opened and used within six years from the time of its being so laid out, shall cease to be a highway for any purpose whatever; but if any distinct part thereof shall have been opened and used within six years, such part shall not be affected by the provisions of this section, nor shall this section be applied to streets and alleys in any town: *Provided, however*, That the trustee shall decide that public necessity does not require such road to be kept open, which decision shall be recorded by the clerk, whereupon said vacated highway shall vest in the rightful owner who may have the title thereof according to law, of the property on each side of said highway.

When this statute was enacted, the law providing for a board of three trustees in each township, and a township clerk was in force. The statute now requires that the township trustee must perform the duties of the former board and of the clerk, and it seems to be necessary to the vacation of an unused highway that he shall make an entry showing that public necessity does not require such road to be kept open.

Actual settlers on public lands.—In all applications for the location, change, or vacation of any public highway, actual settlers upon any public lands in any county in this state, shall have and possess all rights in this act granted to freeholders.

All public highways which have been or may hereafter be used as such, for twenty years or more, shall be deemed public highways.

Who are disqualified to act as viewers.[1]—No person owning lands, or who is related by consanguinity to any person owning lands, along any proposed highway or change, shall be competent to act as commissioner, viewer, or reviewer thereof.

Compensation of viewers.—Viewers and reviewers shall receive one dollar and fifty cents for every day they shall be necessarily employed as such.

The township trustee of any township, on petition of an individual desiring to plant a hedge on his land adjoining a public highway, may grant such individual the privilege of placing his fence seven feet on such highway, if the fence will not be an obstruction to the highway.

The statute providing for the laying out of a private way, has been held unconstitutional by the supreme court. There is therefore no law by which a party can have a way for his private use laid out over the lands of another by any public authority.

When persons may petition for change of highway through their own lands.[2]—Persons through whose lands, any state, county, or township highway may run may petition the board of county commissioners, for permission to change the location of such highway, on their own land, or to change such road on the lands of any other person consenting thereto.

Notice to be given.—Notice of the intention to file such petition must be given by posting written or printed notices thereof, in three or more public places in the vicinity of such proposed change.

Proceeding before commissioners.—Upon the filing of such petition, and proof of posting notices, the board of commissioners shall appoint three disinterested freeholders of the county, as reviewers, who shall meet at such time as they may appoint, and after having been duly sworn, or affirmed, shall proceed to view the premises, and they, or

[1] 5 Ind. 549; 12 Ind. 303. [2] 1 R. S. 1876, 537.

a majority of them, shall report the respective distances of the established and proposed highway, and the situation of the ground along each, and whether or not, in their opinion, the public will be materially injured by such proposed change, and shall file their report with the board of commissioners, at the next session thereafter.

Remonstrance may be filed.—Upon the filing of such report, and before action thereon, if the report be favorable to the change, any freeholder may file his remonstrance against the same, stating therein the reasons why the change ought not to be made, and an issue may be made thereon; and, if the report of the viewers be unfavorable to such change, the petitioner, or petitioners, may make an issue thereon, and any such issue shall be tried before the board of commissioners, as other issues of fact are tried; and if, upon the report of the viewers, or upon any issue tried as above, the board shall be of opinion that the public will not be materially injured by the proposed change, they shall make an order granting permission to the petitioner, or petitioners, to make such change, and, upon satisfactory proof, then or thereafter, that the new road has been opened, and proved equally convenient for travelers, the board shall make an order vacating so much of the former highway as lies between the different points of intersection.

All the costs of such proceedings shall be paid by the petitioner or petitioners. When a remonstrance is filed, and the issue found against the remonstrant, he shall pay all costs occasioned thereby.

Road on county lines, how worked[1]—The statute provides that where a road is situated on a county line, and it is uncertain whose duty it is to work the road, six freeholders of one of the counties may present a petition to the board of county commissioners of such county, describing the road as accurately as possible, and showing

[1] 1 R. S. 1876, 538.

that in consequence of such uncertainty the road has not been worked for some length of time, the board must appoint two disinterested persons as commissioners, whose duty it will be to employ the county surveyor, with whom they will act in the discharge of their duties.

Duties of county auditor.—The auditor of such county must immediately give notice by letter, through the auditor, to the board of commissioners of the other county upon whose border such road is situated, of the filing of such petition, and giving a copy of it, and also giving a copy of the appointment of the two commissioners, refering to the act of the legislature approved March 3, 1859, as his authority for so doing, whereupon it is the duty of county board thus notified, at their first session, to appoint two like commissioners, and the four persons so appointed may, in case of disagreement, select a fifth person, and they must also fix a time when the joint commissioners shall meet and return notice of their action.

Duties of commissioners.—At the time designated the four commissioners and surveyor shall meet at the north or west end, as the case may be, of such road as described in the petition, who having been first sworn according to law, shall proceed carefully to examine the condition and location of the road, and if practicable shall fix the center of the road upon the county line ; having surveyed the whole line of the road, they shall, as near as possible, make an equal division of it, taking into consideration the amount of labor presumed to be necessary to keep it up, as well as the length thereof, and mark the spot by fixing a stone firmly in the ground, and shall determine which of the respective counties shall each work the respective division thus designated.

Report of commissioners to county boards.—The commissioners shall make out and sign a report of the proceedings, describing by metes and bounds the portions of the road to be worked by each county, a copy of which

shall be duly transmitted to the board of county commissioners of each of the two counties, and shall be by them entered upon record, and they shall notify the trustees of the township or townships interested, furnishing them a copy of the reports of the joint commissioners, that it is hereby made their duty to open and work said road as other roads in the townships are worked as the law requires; and the joint commissioners shall receive each, for their services, one dollar and twenty-five cents per day for each day they may have been engaged in performing their duties herein required, and the surveyor shall receive his lawful fees, to be paid out of the county treasury of the respective counties.

FORMS.

Form of Report of Viewers.

To the Honorable Board of Commissioners of the County of Dearborn:

We, the undersigned, viewers appointed by your honorable board to view a certain proposed highway in the townships of Miller and York, as prayed for in the petition of Lorenzo D. Leming and others, hereby report that, in pursuance of the command of the precept issued to us, we met on the day of , 1877, at , and, after being duly sworn, proceeded to view the location and route of said proposed highway, and being of the opinion, upon such examination, that said highway would be of public utility, we proceeded to lay out and mark the same as follows: [*Here describe the road fully, giving the beginning, the routes and bounds, the course and distance and termination.*] And we therefore recommend that said highway be established according to law.

Charles Bewton,
R. M. Hargitt,
John Shanks,
Viewers.

In laying out and describing the highway, the viewers should have the assistance of a practical surveyor, especially if the highway to be laid out be lengthy. If the viewers report that the proposed highway is not of public utility, no description of the grounds is, of course, necessary.

Any person, through whose lands the proposed highway may run, and who will sustain damage thereby, may remonstrate against the opening of the road, and the remonstrance may be substantially as follows:

FORM OF REMONSTRANCE BY PARTY AGGRIEVED.

In the matter of the petition of Lorenzo D. Leming and others, for opening highway.

TO THE HONORABLE BOARD OF COMMISSIONERS OF THE COUNTY OF DEARBORN:

Your petitioner, Samuel McElfresh, respectfully represents to your honorable board that he is the owner of the following tract of land, through which the highway proposed by said petitioners will pass, to wit: [*Here describe the land*], and that his said lands will be greatly injured and damaged, if said highway is opened through the same as in said petition prayed for, and he hereby remonstrates against the laying out of said highway, on account of the injury and damage that will be thereby done to his said premises. SAMUEL MCELFRESH.

Reviewers will thereupon be appointed by the county board, to assess the damages resulting to the remonstrant's land, and, in case the reviewers find that he will be damaged by the opening of the highway, their report will be, in substance, as follows:

In the matter of the petition of Lorenzo D. Leming and others, for location of a highway.

To the Honorable Board of Commissioners of the County of Dearborn:

The undersigned, appointed by your board to review the said proposed highway and assess the damage, if any, sustained by Samuel McElfresh, by reason of the opening of said highway through his lands, hereby report that we have made due examination of said proposed highway, and of the lands of the remonstrant over which the same will pass, and we are of opinion, from such examination, that he will sustain damage by the opening of said highway, and we have assessed the amount thereof at two hundred dollars [*or*, we are of the opinion that he will not sustain any damage by reason of the opening of said highway].

Robert Mason,
Isaac Hayes,
David Frazier.

Any freeholder of the county, residing along the proposed highway, may also remonstrate, on the ground that the highway will not be of public utility.

The form of the remonstrance will, in such case, be as follows:

In the matter of the petition of Lorenzo D. Leming and others, for location of a highway.

To the Honorable Board of Commissioners of the County of Dearborn:

The undersigned, who resides in the county of Dearborn, and along the line of the proposed highway described in said petition, hereby remonstrates against the opening of the same, upon the ground that such proposed highway will not be of public utility.

Robert Lazenby.

Upon the filing of the remonstrance with the county board, reviewers will be appointed who will again view the proposed highway, and report as they may find the fact to be. Any person who is entitled to remonstrate against the opening of a highway, may include both grounds of objection in the same remonstrance.

CHAPTER XI.

JUSTICES OF THE PEACE.[1]

The board of county commissioners of each county shall determine the number of justices of the peace in each township of their respective counties, by proper orders of record, but the number shall not exceed three for each township, and one in addition thereto for each incorporated town therein, and two in addition for each incorporated city therein. In case the county board assign an additional justice to a township because it contains an incorporated town or city, they may require that such justice shall reside in such town or city, but such justice must be elected by the voters of the entire township, and it is discretionary with the commissioners to require him to reside in the town or city.

Number may be reduced.—The board of commissioners may reduce the number of justices in any township where they deem it expedient to do so, but the reduction in number shall not operate to remove any justice from office.

When, by any change in the township, a justice is brought within the limits of a township other than the one in which he was elected, he shall serve out his term of office as one of the justices thereof.

Vacancy in office, how filled.[2]—When a vacancy shall occur in the office of justice in any township, the board of commissioners of the county shall fill the same by appointment, which appointment, shall be certified by the county auditor to the governor, who will thereupon issue a commission to the person appointed, who will serve until his successor is elected and qualified.

When elected, and notice of election.—Justices of the peace

[1] 2 R. S. 1876, 602. [2] 2 R. S. 1876, 603.

are elected on the day of the April election next preceding the time at which a vacancy in the office will occur, or at the election next succeeding the creation of the office, and the clerk of the circuit court must give the township trustee at least thirty days' notice of the time when a justice is to be elected which shall be sufficient authority to the board of judges to hold the election and make legal return thereof. The sheriff must also give notice of such election by posting up notices in at least three public places in such township, and by delivering a copy to the inspector of elections in such townships.

Justices of the peace hold their office for four years, and will not be eligible to any office under the state during the term for which they shall have been elected, other than a judicial office.

Bond of justice.—Justices of the peace are required to to give bond in such sums as may be required by the clerk of the circuit court, not less than two thousand dollars nor exceeding six thousand dollars, conditioned for the faithful discharge of the duties of the office, and for the payment to the proper person of all money which may come to their hands by virtue of such office.

Jurisdiction in civil cases.—Justices have jurisdiction in civil cases where the debt or damages claimed, or the value of the property sought to be recovered, does not exceed two hundred dollars, and they have jurisdiction to render judgment by confession for any sum not exceeding three hundred dollars.

They have no jurisdiction in cases of slander, malicious prosecution, or breach of marriage contract, nor in any case where they are related by blood or marriage to either party within the degree of second cousin.

Jurisdiction as to territory.—The jurisdiction of justices in civil cases is limited to their respective townships, unless otherwise provided by statute. In criminal cases they have jurisdiction throughout their respective counties.

May administer oaths and solemnize marriages in county.—Justices, in their respective counties, may solemnize marriages, and also, within their counties, administer oaths in all cases where an oath may be required.

Record books.[1]—Justices of the peace are entitled to receive from the county commissioners suitable books in which to keep a record of all legal proceedings.

Resignation.—The resignation of a justice must be delivered to the clerk of the circuit court, and may be in the following form:

To John A. Conwell, Esq.,
Clerk of the Dearborn Circuit Court:

I hereby tender my resignation as a justice of the peace of township, in said county, to take effect on the first day of January, 1878.

September 11, 1877. Richard Hubbard.

When may act as coroner.[2]—In case where the coroner is absent from county, or is unable to attend, any justice of the peace of the county may hold inquests, and perform all the duties of the coroner.

[1] Acts 1877, Special Session, 53. [2] 2 R. S. 1876, 22.

CHAPTER XII.

POOR.

Each county must support its own poor.[1]—Every county must relieve and support all poor and indigent persons lawfully settled therein, whenever they stand in need thereof, and the board of county commissioners must raise money for the support and employment of the poor.

Overseers of the poor.—The township trustees of the several civil townships of the state are made by statute overseers of the poor within their respective townships, and every trustee in discharging the duties prescribed by statute for the relief of the poor, is designated "overseer of the poor." All suits and proceedings in favor of or against any such trustee pertaining to, or connected with, the poor of his township, in favor of, or against, such township, shall be conducted in its corporate name.

Legal settlements, how acquired.—The statute provides, that legal settlements may be acquired in any county, so as to oblige such county to relieve and support the person acquiring such settlement, in case they are poor and stand in need of relief as follows:

First. A married woman shall always follow and have the settlement of her husband, if he have any within the state; otherwise, her own at the time of marriage, and if she then had any settlement, it shall not be lost or suspended by the marriage; and, in case the wife shall be removed to the place of her settlement, and the husband shall want relief, he shall receive it in the place where his wife shall have the settlement.

Second. Legitimate children shall follow and have the settlement of the father, if he have any within the state,

[1] 1 R. S. 1876, 676.

until they shall gain a settlement of their own; but, if the father have no settlement, they shall, in like manner, follow and have the settlement of their mother, if she have any.

Third. Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any within the state; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they were born, unless their parent or parents had a settlement therein at the time.

Fourth. Every male person, and every unmarried female over the age of twenty-one years, who shall have resided in any county in this state one whole year without interruption, shall thereby gain a settlement in such county.

Fifth. Every minor whose parent, and every married woman whose husband has no settlement in this state, who shall have resided one whole year without interruption, in any county in this state, shall thereby gain a settlement in such county.

Sixth. Every minor, who shall be bound as an apprentice to any person, shall immediately upon such binding, if done in good faith, thereby gain a settlement where his or her master or mistress has a settlement.

Seventh. Every settlement, when once legally acquired, shall continue until it shall be lost and defeated by acquiring a new one in this state, or by willful and uninterrupted absence from the county in which such legal settlement has been gained, for one whole year or upward; and upon acquiring a new settlement, or upon the happening of such willful and uninterrupted absence, all former settlements shall be defeated and lost.

Duty of overseer in counties without a poor-house.—The overseer of the poor in each township is charged with the care and oversight of all poor persons in his township so long as they remain a county charge, and must see that they are relieved and properly cared for, as required by

law. In counties where there is no common poor-house established by law, the overseers of the poor are required, two weeks preceding the first Monday of May, in each year, to give public notice, by having published in the newspaper or newspapers in their respective counties, or by posting upon the court-house door and in other public places in such counties, an advertisement certifying the poor that are to be provided for, and asking for sealed proposals for their maintenace during said year; which sealed proposals shall be opened and acted on by said overseers on said day; but nothing herein contained shall prohibit any overseers of the poor from receiving and accepting propositions, at any time, for the keeping of such poor persons as may in the interim become a county charge, or of rejecting the propositions of such persons as they may know to be unable to fulfill their obligations to said poor.

When county commissioners must give assistance.—The board of county commissioners may, in their discretion, allow and pay to poor persons who may become chargeable as paupers, and who are of mature years, and sound mind, and who, from their general character, will probably be benefited thereby, and also to the parents of idiots, and of children otherwise helpless, requiring the attention of their parents, and who are unable to provide for said children themselves, such annual allowance as will not exceed the charge of their maintenance in the ordinary mode, the board taking the usual amount of charges in like cases as the rule for making such allowance.

Duty of overseer when poor are ill-treated.—It is the duty of the overseers of the poor, on any complaint made to them in behalf of the poor, to examine into the ground of such complaint; and if, in their judgment, the poor have not been sufficiently provided with the common necessaries of life, or have, in any respect, been ill-treated by the person or persons under whose charge they shall have been placed, to withhold any part of the compensation allowed

to such persons as such overseers may deem reasonable and proper, and remove the poor and place them in the care of some other person.

Poor book.—The overseers of the poor must enter in the poor book of their respective townships, all poor persons in their townships who are unable to take care of themselves, and who will, in their judgment, be entitled to the benefit of the provisions of this act, together with the date of such entry.

Persons may apply to be placed on poor list.—If any poor person shall suppose that he is entitled to the benefit of the laws for the relief of the poor, and the overseers of the poor of the township in which such person resides shall refuse to give him the benefit thereof, upon application of such person, the board of county commissioners may, if they think proper, direct the overseers to receive him upon the poor list on his application therefor.

Where poor person's residence is not known.—If any one within the description of poor persons, as defined by statute, shall be found in any county or township, and the overseers of the poor of such township are unable to ascertain and establish the last place of legal settlement of such person, they must provide for such poor person in the same manner as other poor persons are.

Temporary relief, when may be granted.—Whenever any person, entitled to temporary relief as a pauper, shall be in any township in which he has not a legal settlement, the overseers of the poor thereof may, if the same is deemed advisable, grant such relief, by placing him or her temporarily in the poor-house of such county, if there be any, to be employed therein so far as he or she is capable of any employment.

When poor person may be removed.—Upon complaint of any overseer of the poor, any justice of the peace may, by his warrant, directed to, and to be executed by, any constable, or by any other person therein designated, cause

any poor person found in the township of such overseers likely to become a public charge, and having no legal settlement therein, to be sent and conveyed, at the expense of the county, to the place where such person belongs, if the same can be conveniently done; but if he can not be removed, such person shall be relieved by said overseers whenever such relief is needed.

The complaint in such case may be, in substance, as follows:

FORM OF COMPLAINT FOR REMOVAL OF PAUPER.

State of Indiana, Dearborn county:

Manchester township, of Dearborn county, by George W. Roberts, trustee of said township, complains of Denny Dusky, and says, that he is a poor person, and wholly destitute of means of support, and is likely to become a public charge, and that he has no legal settlement in said county, and that he is a resident of Brookville township in the county of Franklin, to which place he should be sent; wherefore he prays that said Dusky may be summoned, and be required to show cause why he should not be removed to said county of Franklin.

MANCHESTER TOWNSHIP OF DEARBORN COUNTY,
By George W. Roberts,
Trustee.

Upon the filing of the complaint, the justice should issue a summons to the person complained of, directed to some constable, who should forthwith serve the same, and, on the return day named in the summons, the justice should hear the evidence and make such order as the facts proven will warrant.

Order of removal may be appealed from.—If the overseers of the poor, of any township, in any county in the state to which any pauper shall have been removed, shall feel aggrieved by such order of removal, they may, at any time

within twenty days after such removal shall be known to them, appeal from the decision of the justice ordering the removal, to the circuit court of the county from whence the removal was ordered to be made.

Notice of the appeal must be given to the overseer of the poor who procured such order of removal, of the sufficiency of which the circuit court will determine before the appeal is heard.

If the order of removal is defective, the circuit court will permit an amendment without costs.

Overseers must receive persons sent by justice.—When any person is removed from any place to another within the state, by warrant or order under the hand and seal of any justice of the peace, the overseers of the poor of the township or place to which the person shall be removed, are required to receive him, if he have a legal settlement in their county.

How money on contracts must be paid.—In cases where contracts for the support of the poor have been made, the overseer must make return to the county auditor of the sums of money required for the support of the poor of their respective townships, within fifteen days after the making of any such contract, which sums must be paid quarterly out of the county treasury, upon the order of the board of county commissioners, as other claims are paid.

Overseers must settle with county board.—Overseers of the poor must make settlement with the county board, at least once a year, and oftener if required to do so by such board.

When non-residents may be relieved.—It is the duty of the overseers of the poor, on complaint to them that any person, not an inhabitant of their township, is lying sick therein, or in distress without friends or money, so that he is likely to suffer, to examine into the case of such person, and grant such temporary relief as the nature of the same may require; and if any person shall die within any township, without money or other means necessary to defray

the funeral expenses, the overseers of the poor of such township, must employ some person to provide for, and superintend, the burial of such deceased person; and the necessary and reasonable expenses thereof will be paid by and upon the order of such overseers; and the board of county commissioners of the proper county, at any meeting of the board, must examine all claims of such character, and, if found reasonable, direct their payment out of the county treasury.

County asylum.—The board of county commissioners of any county may, when they deem it advisable, purchase a tract of land, in the name of their respective counties, and thereon build, establish, and organize an asylum for the poor, and employ some humane and responsible person or persons, resident in their respective counties, to take charge of the same, upon such terms, and under such restrictions, as the board shall consider most advantageous for the interest of the county; who shall be called the "superintendent of the county asylum." And where two or more counties shall have jointly purchased any tract of land, and erected an asylum for the poor of their several counties, they have the power to continue such joint ownership during their pleasure; and the county commissioners of two or more counties may jointly purchase lands, erect asylums, or take other necessary and proper measures for the relief and support of the poor within the counties forming such joint ownership.

How money shall be raised to build asylums.—To raise the sum necessary for the purchase of land and the erection and furnishing of the buildings for such asylums, the boards of county commissioners, in the several counties, have power to assess a tax on property liable to be assessed for raising a county revenue, not exceeding one-fourth in addition to the rates at which such property may be assessed by the existing laws.

Paupers to be kept in asylum except in certain cases.—As soon as the asylum is ready for occupancy, the board must order all persons who have become permanent charges upon the county as paupers to be removed to such asylums, and must take such measures for the support and employment of such persons as may to the board seem advisable. It is, however, further provided that the board of county commissioners of any county, in their discretion, upon satisfactory proof being made, that any resident of their counties has lost his or her eyesight, or by casualty has become otherwise unable to support himself or herself, by reason of bodily infirmity, and that he or she has a wife or husband, and is an object of public charity, may make an order that the county treasurer pay over such sums of money to such person, or to any person having the keeping of such person, out of the funds of their respective counties, as they may deem necessary and proper for his or her support, so as not to separate them from their families by being placed in the county poor-house.

Duty of superintendent and county board.—The superintendent or superintendents of county asylums must give bond, with freehold security, to the county board, in the penalty of five hundred dollars, conditioned for the faithful discharge of his or their duty; and must make to the board, at their sessions in the spring and fall, annually, a detailed report in writing, of the time and manner of the admission of each pauper; their health and fitness to labor; the result of their industry, and the expenses incurred; and it shall be the duty of the members of such board, in person, annually to inspect the asylum with regard to its fitness, in all respects, for the objects of its establishment. It is the duty of the superintendent or superintendents to receive into his or their care and custody all persons who may become a county charge as paupers, and to take such measures for the employment and support of such paupers, and to perform such other duties as the board

of county commissioners may from time to time order and direct, consistent with the laws of the state. Such superintendents must also bind out such poor children as, from time to time, may fall under their care and charge, and they must see that the children so bound are properly treated by the persons to whom they are bound, and to take means for legal redress in case of maltreatment. It is also the duty of such superintendents to direct and superintend the education of such poor children, and it is their duty to send them to the common school in the township in which the asylum is situated, during the continuance of its session; and whenever it is necessary or practicable, poor children of the asylums who can not be bound out, or whom it may not be expedient to bind out as apprentices, shall be educated at such asylums.

When overseers must present their accounts.—The overseers of the poor must annually, at the June session of the board of county commissioners of their respective counties, present their accounts, and make report to the board generally of their proceedings for the past year, and when the board shall audit or allow any claim or account presented by such overseers of the poor, they shall draw on the county treasurer thereof, whose duty it will be to pay the same out of any money in the county treasury, not otherwise appropriated, and the overseers must meet once in each year with the county board, and oftener if required by such board.

Compensation of overseers of the poor.—The twentieth section of the act for the support of the poor, provides that overseers shall be allowed one dollar per day for their services rendered in the discharge of their duties, to be allowed by the board of commissioners when satisfied that such services have been rendered; and the twenty-third section authorizes the board to allow overseers a reasonable compensation. The two sections, taken together, perhaps should be construed to mean that, for all ordinary service,

one dollar per day must be the rate of compensation, but that, in special cases, where justice requires it, the board may make a further reasonable allowance. Overseers of the poor can not, in any case, charge for their services as such, the fees allowed them by law as township trustees.

Duty of overseer upon removal from township.—If any overseer of the poor shall remove from his township, he must resign his office, and should at once inform the board of county commissioners, if in session, or the county auditor, if such board is not in session, so that a successor may be appointed, to whom he must deliver all books, papers, and other things pertaining to his office.

CHAPTER XIII.

SCHOOLS.

School corporations.—The statute provides that each civil township, and each incorporated town, or city, in the state shall be a distinct municipal corporation for school purposes by the name of the civil township, town, or city, corporation respectively, and by such name may make contracts, sue and be sued in any court having jurisdiction, and the trustee of such township and the school trustees for towns and cities, must perform the duties of clerk and treasurer for school purposes for their respective corporations. Each township, town, and city is therefore a corporation for school purposes, separate and distinct from the civil township, town, or city organization. When a town is incorporated, school trustees should be at once appointed, and if the incorporation is after the enumeration of the children and the levy of taxes, the board of trustees and the trustee of the township in which the town is located should make an equitable division of the school revenues.

School trustees of towns and cities.—The common council of each incorporated city and the board of trustees of each incorporated town must, at their first regular meeting in June, elect three school trustees, who will hold their office one, two, and three years respectively, as the trustee shall determine by lot at the time of their organization, and, annually thereafter, shall elect one school trustee, who will hold his office for three years. Such trustees will constitute the school board of the city or town, and before entering upon the duties of their office, shall take an oath, faithfully to discharge their duties. They are required to meet within five days after their election, and reorganize by electing one of their number president, one secretary, and one treas-

urer. The treasurer, before entering upon the duties of his office, shall execute a bond to the acceptance of the county auditor, conditioned as in ordinary official bonds, with at least two sufficient freehold sureties, who shall not be members of the board, in a sum not less than double the amount of money which may come into his hands within any one year by virtue of his office. The president and secretary shall each give bond with like sureties, to be approved by the county auditor, in any sum not less than one-third of the treasurer's bond. And each year, within five days after the election of a member, the board must reorganize and execute new bonds for the coming year.

All vacancies that may occur in the board of school trustees, must be filled by the common council of the city, or board of trustees of the town. But the appointment to fill a vacancy will only be for the unexpired term.

Compensation of trustees.—Trustees shall receive for their services such compensation as the common council of the city or the board of trustees of the town may deem just, which compensation shall be paid from the special school revenue of the city or town.

Duty of auditor.—In accepting the bonds of trustees, the auditor must look to their sufficiency to secure all the school revenues that may come to their hands, and the auditor must report the name and post-office address of each trustee to the superintendent of public instruction.

The seventh section of the school law provides that, "in case of a vacancy in the office of trustee, the county auditor shall appoint a person to fill the same."

In view of the provisions of the fifth section of the same law, which requires the common council of a city, or the trustees of a town, to fill vacancies in the board of school trustees, the language quoted must be construed to apply to vacancies in the office of township trustee.

By the ninth section of the act providing for the mode of doing township business, the board of county commis-

sioners is required to fill vacancies in the office of township trustee, occurring while the board is in session.[1] The several provisions of the statutes being construed together, the law would seem to be, that in case of a vacancy in the board of school trustees of a city or town, the common council of the city, or the board of trustees of the town, as the case may be, will fill it; and in case of a vacancy in the office of township trustee, it must be filled by the board of county commissioners, if in session; if not, then by the county auditor.

School trustees must keep accounts and make reports.—The school trustees of every township, incorporated town or city, must receive the special school revenue belonging thereto, and the revenue for tuition which may be apportioned to their township, town, or city, for tuition in the common schools, and pay out the same for the purpose for which such revenues were collected and appropriated. Trustees are required to keep accurate accounts of the receipts and expenditures of such revenues, and shall render to the county commissioners annually, on the first Monday after the second Tuesday in October, and as much oftener as they may require, a report thereof in writing for the year then ending. The board of commissioners shall, that day, hold a session to receive the reports; they must clearly and separately state:

First. The amount of special school revenue, and of school revenue for tuition, on hand at the commencement of the year then ending.

Second. The amount of each kind of revenue received within the year, giving the amount of tuition revenue received at each semi-annual apportionment thereof.

Third. The amount of each kind of revenue paid out and expended within the year.

Fourth. The amount of each kind of revenue on hand at the date of the report, to be carried to the new account,

[1] 1 R. S. 1876, 901.

and shall, with such report, present and file a detailed account current of the receipts and payments for the year, and support the same by proper vouchers, which report and account current shall each be verified by affidavit, and when the county commissioners are satisfied that such report is full, accurate, and right, in all respects, and that the account is just and true, they shall allow and pass the same, which shall have the effect to credit the trustee for the expenditures. A copy of the report, as passed and allowed by the county commissioners, must, within ten days after its date, be filed by the trustee with the county superintendent of the county; and, upon failure of the trustee to discharge any of the duties required of him, relative to schools and school revenues, the board of county commissioners shall cause suit to be instituted against him, on his official bond, and, in case of recovery, the court rendering the judgment must assess upon the amount thereof ten per cent. damages, to be included in the judgment.

Trustees must keep a record.—Township trustees, and the board of school trustees of cities and towns, must keep a record of their proceedings relative to the schools, including all orders and allowances on account thereof; including, also, accounts of all receipts and expenditures of school revenue, distinguishing between the special school revenue belonging to their township, town, or city, and the school revenue for tuition, which belongs to the state, and by it apportioned to their township, town, or city, which revenue for tuition they shall not permit to be expended for any other purpose, nor even for that purpose in advance of its apportionment to their respective corporations.

Trustees to make statement.—All school trustees are required, immediately after their annual settlements with the county commissioners, in October, to make a full statement of their receipts and expenditures for the year preceding,

relative to their schools. The duties of trustees in reference to this statement, are not clearly defined by statute.

The superintendent of public instruction is of the opinion that such statement should be made separately from the report of trustees required by the eleventh section of the act providing for the mode of doing township business, and published at the same time, and in the same manner.[1] Trustees should conform to his construction of the statute.

Powers of school trustees.—The trustees shall take charge of the educational affairs of their respective townships, towns, and cities, employ teachers, and shall establish and locate, conveniently, a sufficient number of schools for the education of the children therein, and build, or otherwise provide, suitable houses, furniture, apparatus, and other articles and educational appliances necessary for the thorough organization and efficient management of the schools. They may also establish graded schools, or such modifications of them as may be practicable, and provide for admission into the higher departments of the graded school, from the primary schools of their townships, such pupils as are sufficiently advanced for such admission. They shall have the care and management of all property, real and personal, belonging to their respective corporations for common school purposes, except the congressional township school lands, which lands shall be under the care and management of the trustee of the civil township to which such lands belong.

School superintendents in cities and towns.—The school trustees of incorporated towns and cities shall have power to employ a superintendent for their schools, whose salary shall be paid from the special school revenue, and to prescribe his duties, and to direct in the discharge of the same.

Joint graded schools may be established. — The school trustees of two or more distinct municipal corporations for school purposes, have power to establish joint graded

[1] 1 R. S. 1876, 901.

schools, or such modifications of them as may be practicable, and provide for admission into the higher departments of their graded schools, from the primary schools of their corporations, such pupils as are sufficiently advanced for such admission. The trustees shall have the care and management of such graded schools, and they will select the teachers therefor. They have power to purchase suitable grounds for such graded schools, and erect suitable buildings thereon, and the title to all such property acquired for such purposes shall vest jointly in the corporations establishing the graded schools.

All township schools to be taught an equal length of time.—All schools in a township must be taught an equal length of time, as nearly as the same can be done, without regard to the diversity in the number of pupils at the several schools, or the cost of the school, and each school shall be numbered by the proper trustee as school No. —.

School trustees may levy tax for certain purposes.—The trustees of the several townships, towns, and cities, have the power to levy a special tax, in their respective townships, towns, or cities, for the construction, renting, or repairing of school houses, providing furniture, school apparatus, and fuel therefor, and for the payment of other necessary expenses of the school, except tuition; but no tax shall exceed the sum of fifty cents on each one hundred dollars' worth of taxable property, and one dollar on each poll, in any one year, and the income from the tax is denominated the special school revenue; and any tax-payer who may choose to pay to the treasurer of the township, town, or city wherein he has property liable to taxation, any amount of money, or furnish building material for the construction of school houses, or furniture, or fuel therefor, shall be entitled to a receipt therefor from the trustee of the township, town, or city, which shall exempt the tax-payer from any further taxes for that purpose until the taxes levied for such purposes, would, if not thus paid,

amount to the sum or value of the materials so furnished, or amount so paid. The trustees are not bound to receive the building material, furniture, or fuel, unless they see proper to do so, but they are bound to receive the money when offered, and must execute a receipt therefor to the person paying the same.

County auditor shall make assessments.—The county auditor must, upon the property and polls liable for taxation for state and county purposes, make the proper assessments of special school tax levied by the trustee, in the same manner as for state and county revenue, and shall set down the amount of the tax on his tax list and duplicate thereof, as other taxes are set down, in the appropriate columns, and he must extend the assessment to the taxable property of the person transferred, which is situated in the township, town, or city to which the transfer is made, and to the property and poll of the person transferred, situate in the township, town, or city in which the person taxed resides, according to the rate and levy thereof, in the township, town, or city to which the transfer is made, and for its use; and the tax shall be collected by the county treasurer as other taxes are collected, and shall be paid, when collected, to the treasurer for school purposes of the proper township, town, or city, upon the warrant of the county auditor; and to enable county auditors correctly to assess such tax, the county superintendents of the several counties must, at the time they make out and report to the auditor, the basis of the apportionment of school revenue for tuition, make out and report to the auditors a statement of transfers which have been made for school purposes.

Trustees must make enumeration.—The trustees of the several townships, towns, and cities shall, between the first of March and the first of May in each year, make an enumeration of the children, white and colored, within their respective townships, towns, and cities, between the ages of six and twenty-one years, exclusive of married

persons; and in making such enumeration, the trustee must distinguish between the white and colored children, enumerating them in separate lists, and shall list the names of parents, guardians, or heads of families, male or female, having charge of such children; and opposite each name, in appropriate columns, he must enter the whole number of such children in charge of the person so named, specifying particularly the number of males, the number of females, the number of the school to which such person is attached for school purposes, and the number and initials which designate the congressional townships in which such person resides, including in the list and enumeration the names of persons who have been transferred to the township, town, or city from other townships, towns, or cities, and the enumeration of their children, and excluding therefrom the names and number of children of such persons as have been transferred from the township, town, or city, and each township trustee must make inquiry of each parent, guardian, or head of a family, having charge of children between the ages aforesaid, whose residence has been changed, or whose children have become subject to be enumerated for the first time since the last enumeration, to which school such person desires to be attached, and, in case the location of a school in the township has been changed since the last enumeration, the trustee must make the same inquiry of the persons whose school privileges are affected by the change. Trustees of cities and towns are not required to make such inquiry when they make their enumeration. The persons listed in each city and town are considered as forming but a single school district, distinct from the township in which they are situated. No person, after having selected the school to which he or she desires to be attached, can be transferred to, or have the privilege of, any other school, except by the consent of the trustees, for good cause shown.

It has been held that only children who reside or are

domiciled in the township in which the enumeration is made are entitled to the benefit of the common schools of such township. Children of parents residing in another state can not be sent into this state, merely for the purpose of acquiring an education, and be entitled to enjoy the benefits of the common schools, even if a person residing in the state should be appointed guardian of such children.[1] The superintendent of public instruction, however, holds that the statute must not be so construed as to exclude from the schools the children of persons who, in good faith, move into a district after the enumeration is made.

When trustees may transfer from one township to another.—When persons can be better accommodated at the school of an adjoining township, or of any incorporated town or city, the trustee of the town or city in which such persons reside, shall, if such persons so request, at the time of making the enumeration, transfer them, for educational purposes, to such township, town, or city, and notify the trustee of such transfer, which notice shall furnish the enumeration of the children of the persons so transferred; and each trustee must, with his report of the enumeration, report distinctly the persons transferred to his township, town, or city, for school purposes, indicating in the report the number of children in charge of the persons transferred, with the same particularity that is observed in the enumeration.[2]

Where person transferred must pay tax.—Each person so transferred for educational purposes, to a township, town, or city, in an adjoining county, must annually pay to the treasurer of such township, town, or city (when a tax is levied therein for the purposes aforesaid), a sum equal to the tax levied, computing the same upon the property and poll liable to tax, of such persons in the township, town, or city where he resides, according to the valuation thereof, by the proper assessor, which payment will release his

[1] 18 Ind. 14. [2] 26 Ind. 345.

property from special school tax, in the township in which he resides, and, in default of such payment, shall be debarred from educational privileges in the township, town, or city to which he may have been transferred; and the trustee thereof shall notify the trustee of the township, town, or city in which he (the person transferred) resides, of such exclusion.

Trustee to file report with county superintendent.—Each trustee must, on or before the first day of May, annually, report to and file with the county superintendent of the proper county, a copy of his list and enumeration, with his affidavit indorsed thereon, to the effect that the same is, to the best of his knowledge and belief, full and accurate, and that the enumeration does not include persons who are less than six nor more than twenty-one years of age. And when a congressional township is located in two or more counties, the trustee of each portion thereof, in the several counties, must report at the same time, and in the same manner, to the superintendent of the county in which the congressional township is held in trust and managed.

Teachers to report to trustees.—The teacher of each school, whether in township, town, or city, must, at the expiration of the term of the school for which the teacher shall have been employed, furnish a complete report to the proper trustee, verified by affidavit, showing the length of the school term, in days, the number of teachers employed, male and female, and their daily compensation, the number of pupils admitted during the term, distinguishing between males and females, and between the ages of six and twenty-one years, the average attendance, books used, and branches taught, and the number of pupils engaged in the study of each branch; and, until such report shall have been so filed, such trustees shall not pay more than seventy-five per cent. of the wages to such delinquent teachers for their

services. These reports are required to be made to enable trustees to make the reports required of them.

Trustees must report to the county superintendent.—The trustees of each township, town, or city, must, annually, on the first day of September, report and furnish to the county superintendent the statistical information obtained from teachers of the schools of their respective townships, towns, or cities, and embody in a tabular form the following additional items: The number of districts; schools taught, and their grades; teachers, male and female; average compensation of each grade; balance of tuition revenue on hand at the commencement of the current year; amount received during the year from the county treasurer, and amount expended within the year for tuition, and balance on hand; length of school taught within the year, in days; school houses erected during the year; the cost of the same; the number and kind before erected and the estimated value thereof, and of all other school property; number of volumes in the library, and the number taken out during the year ending the first day of September, also the number of volumes added thereto; assessment on each one hundred dollars of taxable property, on each poll of special tax for school house erection, and amount of such levy; balance of special school revenue on hand at the commencement of the current year; amount received during the year from the county treasurer; the amount of said revenue expended during the year, and balance on hand; the number of acres of unsold congressional school lands, the value thereof, and the income therefrom, together with such other information as may be called for by the county superintendent and superintendent of public instruction.

Liability of trustee for failure to report.—On the failure of any trustee to make the reports to the county superintendent, required by law, at the time and in the manner specified in the school law, the superintendent to whom the report should be made must, within one week of the

time the next semi-annual apportionment is to be made by the auditor of his county, notify such officer, in writing, of the failure, and the auditor shall thereupon diminish the apportionment of such township, town, or city the sum of twenty-five dollars, and withhold from the delinquent trustee the warrant for the money apportioned to his township, town, or city, until the delinquent report is properly made and filed. The trustee will be liable on his bond for the sum of twenty-five dollars, and for such additional damage as the township, town, or city may sustain by the stopping of the money, for which the county commissioners may sue.

Penalty for failure of trustee to perform his duties.—If any trustee fail to discharge any of the duties of his office relative to the schools, any person may maintain an action against him for every such offense, in the name of the State of Indiana, and may recover, for the use of the common school fund, any sum not exceeding ten dollars, which sum, when collected, shall be paid into the county treasury, and added, by the county auditor, to such fund, and reported accordingly. And any person elected or appointed such trustee, who shall fail to qualify and serve as such, if he has not previously served in that capacity, will be liable to pay the sum of five dollars, to be recovered in the same manner, and the money, when collected, must be paid into the county treasury for the benefit of the same fund.

The language of the statute is, that "any person" may maintain the action, but it is manifest that it should not receive so broad a construction as the words used would seem to warrant, and the right to sue should at least be limited to residents of the township, town, or city in which the forfeiture occurred. The statute includes township trustees and members of boards of school trustees in cities and towns.

Directors, how chosen.—The voters of each school district,

whom the statute defines to be all tax-payers, except married women and minors, will meet annually on the first Saturday in October, and elect one of their number director of such school, who shall, before entering upon duty, take an oath faithfully to discharge the same. The director so elected shall, within ten days after such election, notify the trustee of his election, and in case of failure to elect, the trustee must forthwith appoint a director of the school; but any director so appointed may be removed upon a petition of three-fourths of the persons attached to the school, who are entitled to vote at school meetings.

How other meetings may be held.—The voters at school meetings may hold other school meetings at any time, upon a call of the director or any five voters. Five days' notice shall be given of such meeting by posting notices in five public places in the vicinity; but no meeting will be illegal for want of such notice, in the absence of fraud; and the legality of such proceedings, if called in question, must be determined by the trustee of the township, subject to an appeal to the county superintendent, whose decision is final.

Power of school meetings.—Such school meeting shall have power to determine what branches, in addition to orthography, reading, writing, arithmetic, geography, English grammar, physiology, and the history of the United States, they desire to be taught in such school, and the time at which the school shall be taught: *Provided*, *however*, The tuition revenue apportioned to the school must be expended within the school year for which it was apportioned, which begins on the first Monday in July. Such school meetings shall have power to fill vacancies that may occur in the office of director, to direct such repairs as they may deem necessary in their school house, to petition the township trustee for the removal of their school-house to a more convenient location, for the erection of a new one, or the sale of an old one, and the lands belonging thereto, and

upon any other subject connected therewith; and at such meetings all the tax-payers of the district shall be entitled to vote on all questions, except minors and married women. In all cases where such meetings petition the trustee in regard to the repairs, removal, or erection of a school house, they must also furnish him an estimate of the probable cost thereof.

The statute, however, permits the trustee to exercise a sound discretion as to the propriety or expediency of making repairs to school houses or removing them or building new ones, and as to the cost thereof, notwithstanding any directions that may have been given at such meetings.

School meetings have no authority to employ teachers or fix their compensation, nor is the trustee bound to employ the teacher designated by a school meeting, but the trustee is forbidden to employ a teacher whom a majority of those entitled to vote at school meetings have decided at any regular school meeting they do not wish employed. School meetings are only held in townships, and not in cities or towns, and hence all the provisions of the statute in reference to school meetings apply only to school districts outside of incorporated towns and cities.

Teachers must have certificate of qualification.—Trustees can not employ any person to teach in any of the common schools of the state, unless such person shall have a license to teach, issued from the proper state or county authority, and in full force at the date of employment; and any teacher who shall commence teaching any school without a license shall forfeit all claim to compensation out of the school revenue for tuition for the time he teaches without a license; but if a teacher's license expires by its own limitation during the term of his employment, such expiration will not suspend the school or stop the teacher's pay.

Dismissal of teacher.—After any school has commenced, if a majority of the voters of the school district petition

the trustee to dismiss the teacher, he shall do so upon due notice and for good cause shown, but not otherwise, and should the petition be granted the teacher will be entitled to his pay to the time of dismissal.

This provision of the statute does not apply to incorporated towns and cities, and there is no statute authorizing the school board of those corporations to dismiss a teacher. If, however, a person employed to teach a public school in a city or town proves to be incompetent, or unfit for the position, the board of trustees may discharge him. But if such teacher should claim that he was improperly discharged, and should bring an action against the school corporation to recover his wages accruing after his discharge, the defendant would be compelled to prove upon the trial that there was just cause for his dismissal, or the teacher would be entitled to recover. The mere fact that he had been discharged by the school board would be no defense to the action.[1] It is otherwise in case of the dismissal of a teacher by the township trustee. His decision, if the proceedings have been in accordance with the statute, is conclusive, unless an appeal is taken, in which case, the decision of the county superintendent is final.[2]

Duties of director.—First. The director shall preside at all school meetings, and make a record of the proceedings, and shall act as the organ of communication between the inhabitants of the township and the trustee.

Second. He shall take charge of the school house and property belonging to the same, under the general order and with the concurrence of the trustee, and preserve the same, and shall make all temporary repairs of the school house, furniture, and fixtures, and furnish fuel for the school, and report the cost thereof to the trustee for payment.

Third. He must visit and inspect the school from time to time, and may, when necessary, exclude any refractory

[1] 42 Ind. 200. [2] See 27 Ind. 119.

pupil from the school, but not for a period beyond the current term, for disorderly conduct, and it may be, in the discretion of the director, for a shorter period.

Appeal from decision of director.—The action of the director, in excluding a pupil from school, is subject to appeal to the township trustee, whose decision will be final.

When any voter may preside at school meeting.—In the absence of the director at any school meeting, the voters present may choose one of their number to preside, who will perform the duties of the director.

County superintendent.—The township trustees of the several townships must meet at the county auditor's office of their respective counties, on the first Monday of June, of every second year, counting from 1873, and appoint a county superintendent, who shall be a citizen of such county, whose official term will expire as soon as his successor is appointed and qualified, who, before entering upon the duties of his office, must take and subscribe an oath that he will faithfully perform his duties as such officer according to law, which oath shall be filed with the county auditor, and shall execute a bond, with freehold surety, to the approval of the county auditor, payable to the State of Indiana, in the penal sum of one thousand dollars, conditioned that he will faithfully discharge his duties according to law, and faithfully account for, and pay over to the proper persons, all moneys which may come into his hands by reason of such office, and thereupon the county auditor shall report the name and post-office address of the person appointed to the superintendent of public instruction.

By an act of the legislature, approved March 9, 1875, it was attempted to amend the law so as to confer upon the county commissioners the power to appoint county superintendents; but the amendment is probably inoperative, on account of a defect in the title of the amending act.[1]

[1] 1 R. S. 1876, 790.

By whom and for what cause superintendent may be removed.—The board of county commissioners shall have power to dismiss any county superintendent for immorality, incompetency, or general neglect of duty, or for acting as agent for the sale of any text book, school furniture, or maps; but no county superintendent shall be dismissed without giving him written notice, under the hand and seal of the auditor, ten days before the first day of the term of the court of commissioners at which the cause is to be heard, and the notice shall state the charges preferred against the superintendent, the character of the instrument in which they are preferred, whether petition, complaint, or other writing, and in the name of the persons preferring the same.

As the statute conferring the power to remove county superintendents upon the county commissioners makes no provision for an appeal from the order made, probably no such right exists. Such seems to be the effect of the later decisions of the supreme court.[1]

Vacancy in office, how filled.—In case of the death, resignation, or removal of the superintendent, the county commissioners, on the notice of the county auditor, must assemble at the office of such auditor and elect a successor. The auditor will act as clerk of all elections of superintendent, and must make a record thereof in a book to be kept for that purpose, and must give the casting vote in case of a tie.

Duties of superintendent.—The superintendent shall examine all applicants for license as teachers of the common schools of the state, by a series of written or printed questions, requiring answers in writing, if he wishes so to do, and in addition to questions and answers in writing, questions may be asked and answered orally; and if from the ratio of correct answers and other evidences disclosed by

[1] For authorities bearing upon the right of appeal from the decisions of the county commissioners, see 39 Ind. 536, and cases cited.

the examination, the applicant is found to possess a knowledge which is sufficient in the estimation of the superintendent to enable the applicant to successfully teach orthography, reading, writing, arithmetic, geography, English grammar, physiology, and the history of the United States, and to govern a school, the superintendent shall license the applicant for the term of six months, twelve months, eighteen months, or two years, according to the ratio of correct answers and other evidences of qualification given upon the examination, the standard of which shall be fixed by the superintendent, and applicants before being licensed shall produce to the superintendent the proper trustees' certificate, or other satisfactory evidence of good moral character. After an applicant has received two licenses in succession, for two years in the same county, the superintendent thereof after the expiration of the last license issued, may renew the same without a re-examination, at his discretion. He must also perform all the duties formerly required of county examiners

School meeting may designate branches to be taught.—If the persons attached to and forming a school district have, at their school meeting, designated other or a less number of branches of learning than those above mentioned which they desire to have taught in their school, the trustee, in employing a teacher for such school, shall require the teacher to be examined as to his qualification to teach the branches of learning required at said school meeting.

This must be understood to apply only to schools outside of cities and towns.

The school boards in incorporated towns and cities can not dispense with the teaching of any of the branches required by the statute.

The county superintendent has power to revoke licenses granted by him or his predecessors, for incompetency, immorality, cruelty, or general neglect of the business of the school, and the revocation of the license of any teacher

will terminate the school which such teacher may have been employed to teach.

The teacher will be entitled to his compensation up to the time he receives notice of the revocation of his license.

The county superintendent must hold at least one public examination in each month in the year, in his county, and in no case can he grant a license upon a private examination, and all licenses granted by him are limited to the county in which they are granted.

Superintendent must keep a record and make report.—The county superintendent is required to provide a blank book at the expense of the county, in which he shall keep minutes of his proceedings, and he must deliver such record, and all other books, papers, and property appertaining to his office, to his successor, and take a receipt therefor. The superintendent shall, in the last week of May, annually, report to the superintendent of public instruction, the name of the persons to whom he has granted license, since the last report, for his county, distinguishing between those licensed for six, twelve, eighteen, and twenty-four months, giving the number of males and the number of females, and total number licensed, and the number, but not the names, of applicants for license who have been rejected, and the number of licenses revoked.

State board of education may license teachers.—Teachers may apply to the state board of education for certificates; and if, on a thorough and critical examination, they are found to possess eminent scholarship and professional ability, and upon furnishing the board with satisfactory evidence of good moral character, will be entitled to receive from such board a certificate which will entitle the holder to teach in any of the schools of the state, during his life, without further examination, unless revoked by the board. The applicant, in such case, must pay to the treasurer of the board a fee of five dollars.

General duties of superintendent.—The superintendent is

required to have the general superintendence of the schools of his county, to attend each township institute at least once a year, and to preside at the same, and conduct the exercises, and to visit each school of the county at least once a year, for the purpose of increasing their usefulness, and to elevate, as far as possible, the poorer schools to the standard of the best; to encourage teachers' institutes and associations, and labor in every practicable way to elevate the standard of teaching, and to improve the schools of his county. He is also required to give his opinion in all controversies of a general nature, arising under the school law. An appeal may be taken from his decision to the state superintendent, and, in such case, it is his duty to certify a written statement of the facts.

In conferring this authority upon the superintendent, the statute expressly provides that the right of any party to bring suit in any court of competent jurisdiction, in any case arising under the school law, shall not be abridged. The object of the statute seems to be to provide a prompt and inexpensive mode of settling questions under the school law, where parties desire to resort to it.

The superintendent must, at all times, carry out the orders and instructions of the state board of education, and he is the medium between such superintendent and the subordinate school officers and schools.

City schools, having a superintendent employed by the board of school trustees of such city, may, at the request of the board, be exempt from the general supervision of the county superintendent.

When superintendent must make enumeration.—When any trustee shall neglect to file with the county superintendent an enumeration of the children of the township, town, or city, the county superintendent must, immediately after the first day of May in each year, employ a competent person to take the same, and allow a reasonable compensation for such services, payable from the special school revenue

of the township, and shall proceed to recover the same in the name of the State of Indiana, for the use of said revenue of the township, by action against the trustee in his individual capacity; and, in such suit, the county superintendent will be a competent witness.

County superintendent must report to state superintendent.—The county superintendents are required, on or before the 15th day of May, annually, to make out and forward to the state superintendent the enumeration of their respective counties, with the same particular discrimination required of the trustee, and shall, on or before the 15th day of September, annually furnish the statistical information, which trustees are required to report to them in such form as may be prescribed by the superintendent of public instruction. They must also furnish with such statistical report such additional information embodied in a written report relative to the condition of the schools, school houses, and the general progress of education in the county, as the state superintendent may from time to time call for. On failure of any county superintendent to make his report of the enumeration by the 15th day of May, his county shall be subject to a diminution of twenty-five dollars in the next apportionment of school revenue by the state superintendent, and on failure to make his statistical and other reports by the 15th day of September, his county shall be subject to a diminution of ten dollars in the next apportionment likewise. The sum thus withheld may be collected from the county superintendent, in a suit before a justice of the peace, prosecuted in the name of the state by any person living in the county, who has children enumerated for school purposes for the current year, who is aggrieved by such diminution. Suit shall be commenced within two years from the time when the report was due, and not afterward. The county superintendent may discharge himself from liability to such suit, by a certificate

of the postmaster, that the report was mailed in due time, together with his own affidavit of that fact.

County superintendent must make basis of apportionment.—The county superintendent shall make out from the list of enumeration, and the reports of transfers, the basis of the apportionment of school revenue to the several townships, towns, and cities of their respective counties, and parts of congressional townships of adjoining counties, whose congressional township fund is managed in their counties, and report the same to the proper county auditor by the first day of June, annually, so as to enable the county auditor to accurately apportion the school revenue for tuition.

He must examine the dockets of certain officers.—The county superintendent must, at least once in each year, and as much oftener as he may deem proper, fully examine the dockets, records, and accounts of the clerk of the court, county auditor, county commissioners, justices of the peace, prosecuting attorneys, and mayors of cities, and see that all fines, forfeitures, unclaimed fees, liquor licenses, and surplus dog tax, etc., are promptly collected, reported, and paid over to the proper fund. He must see that the full amount of interest on school funds is paid and apportioned, and when there is a deficit of interest on any school fund, or a loss of any school fund or revenue by the county, that proper warrants are issued for the reimbursement of the same.

The official dockets, records, and books of account of the clerk of the courts, county auditor, county commissioners, justices of the peace, prosecuting attorneys, mayors of cities, and township and school trustees, shall be open at all times to the inspection of the county superintendent, and whenever he shall find that any of such officers have neglected or refused to collect and pay over any money due the school funds and revenues of the state, or have misapplied the school funds or revenues in their possession, he is required to institute suit in the name of the State of

Indiana for the recovery of the same for the benefit of the school fund or revenues, and make report of the same to the board of county commissioners and to the state superintendent.

The county commissioners must fix the number of days in each year which the county superintendent is required to labor in the performance of the duties required of him in visiting the schools, but the number of days can not be less than the whole number of schools in the county over which he has control.

On the presentation of his account stating, in separate items, the nature and amount of service rendered on each day for which he claims compensation, and verified by his affidavit, the county board will be authorized to allow him four dollars per day for each day he has been employed. He is not allowed fees for his services in any case.

County board of education.—The county superintendent and the school trustees of townships, and the chairmen of the school boards of cities and towns, constitute a county board of education in each county, and as such must meet at the superintendent's office on the first days of May and September of each year, or, if said days be Sundays, then on the day following. A majority of the members of board will constitute a quorum. The superintendent must preside at the meetings, and is allowed to vote on all questions coming before the board.

Duties and powers of county board.—The board shall consider the general wants and needs of the schools and school property of which they have charge, and all matters relating to the purchase of school furniture, books, maps, charts, etc. The change of text-books, except in cities, and in the care and management of the township libraries, shall be determined by the county board; and each township must conform, as nearly as practicable, to its action, but no text-book adopted by such board, after March 2, 1877, shall be changed within six years from the date of such adoption ex-

cept by unanimous vote of all the members of the board, and any text-book adopted before that date can not be changed within three years of its adoption.[1] The object of the act of 1877 was to prohibit the frequent changes of text-books, and by its terms it forbids any change where certain books had been adopted at the date of the passage of the act, for three years from the date of such adoption even by unanimous vote of all the members of the board.

Township institutes.—One Saturday in each month, and two in each month if the township trustee requires, during the time the public schools are in progress, must be devoted to township institutes or model schools for the benefit and improvement of teachers. The township trustee must designate a teacher, or other person, to preside over the institute. In his contract with each teacher, the township trustee must specify that the teacher shall attend the full session of the institute in the township or forfeit one day's wages as such teacher for every day of absence from the institute, unless his absence is occasioned by sickness.

Lands belonging to congressional township fund.[2]—The custody and care of all lands belonging to the congressional township fund shall be with the trustee of the civil township in which the same shall be situated, who shall report annually to the auditor by the fourth Monday in March, the annual income derived therefrom, to the township, and such report shall embrace a fully itemized statement of his rent account of such lands, to whom and for what amount the same was rented to each tenant, and whether the rents have been collected or not, and if any portion has not been collected, he should state fully the reasons why the same has not been collected, and any trustee who has heretofore failed and neglected to so report shall embrace in his first report such itemized statement and showing for each preceding year not so reported

[1] Acts 1877, Regular Session, 122. [2] 1 R. S. 1876, 794.

whether by himself or his predecessors, and the amount of school funds for any year to which such townships might otherwise be entitled shall be withheld and not paid over to such trustee if the rental value of said lands for such terms shall equal or exceed the township's otherwise portion of the school fund, and it shall be the duty of such trustee to pay into the county treasury all rents collected and reported by him.

When trustees may lease lands.—Township trustees have power, when directed so to do, by a vote, or by the written direction of a majority of the voters of the congressional township to which the same belongs, to lease such lands for any term not exceeding seven years, reserving rents, payable in money, property, or improvements upon the land, as may be directed by the majority of such voters.

When congressional township land is divided by a civil township line.—When the sixteenth section, or the section which may be granted in lieu thereof, shall be divided by a county or civil township line, or where the substituted section lies, in any other county in the state, the voters of the congressional township to which the same belongs shall designate, by vote, or by the written direction of a majority of the trustees of one of the civil townships, including a part of said section, to have the care and custody of said section, and to carry out the directions of the voters of the township in relation thereto; and the trustee so designated shall have the same powers and perform the same duties as if the entire section was situated within the limits of the civil township, and receive from the county treasurer the revenue derived from funds accrued from such sale.

Powers of trustees in relation to school lands.—Township trustees have all the rights and powers of landlords in enforcing the fulfillment of contracts relating to such lands in preventing waste and damage of, for the recovery of damage when the same has been done, and may bring ac-

tions in their official name, in all such cases, whenever necessary.[1]

Sale of school lands, how determined.—When five voters of any congressional township shall, by petition to the trustees having charge of the school land belonging to such township, ask for the sale of all, or any part, of such land, the trustees shall give public notice, in five public places in such township, of the time and place, in the township, when and where a balloting will be had to determine whether the land shall be sold, which notice shall be given at least twenty days before the time specified therein. The petition must be recorded by the trustee in the book containing the record of the proceedings, and his action upon the petition must also be recorded.

Voters favoring a sale will write on their ballots "sale," and those opposed "no sale," and the sale will not be allowed unless there is a majority of votes cast in favor thereof, nor unless the number of votes constituting such majority shall exceed fifteen. The statute does not require that there shall be a majority exceeding fifteen in favor of the sale, but that more than fifteen votes shall be cast in favor of a sale, and that such number shall be a majority.

The trustee must attend at the place of balloting and certify the number of votes given for and against the sale, and must file his certificate thereof in his office and enter the same on his record book.

Proceedings for sale of land.—The trustee, if satisfied that a majority of all, and more than fifteen voters have voted for such sale, he shall, after having entered the same on his record book, proceed—

First. To divide the lands so voted to be sold into such lots as will secure the best price.

Second. To affix a minimum price to each lot, not less

[1] For the statute relating to landlord and tenant, see 2 R. S. 1876, 336, 662.

than one dollar and twenty-five cents per acre, below which it shall not be sold.

Third. To certify such division and appraisement to the proper county auditor, together with a copy of all of his proceedings in relation to the sale of the lands.

County commissioners to order sale.—The county auditor must present the certificate and return to the commissioners at their first meeting thereafter, and the board, if satisfied that the law has been substantially complied with, must order the sale. The board should be satisfied that the requisite number of votes has been cast in favor of the sale, and that the appraisement is properly made before the sale is ordered. A strict compliance with the statute, to this extent, would seem to be indispensable, and the trustee should, if possible, follow the strict letter of the law in all respects. If a sale is ordered, it must be conducted as follows:

First. It shall be made by the auditor and treasurer.

Second. Four weeks' notice of the same must be given, by posting notices thereof in three public places of the township where the land is situated, and at the court-house door, and by publication in a newspaper printed in the county, if any; otherwise in the newspaper of any county in the state situated nearest thereto. The sale must be made by the auditor, at public auction, at the door of the court-house of the county in which the land is situated, and the treasurer must take an account thereof; and each of the officers, for making such sale, shall receive a fee of one dollar, to be paid by the purchaser.

Terms of sale.—One-fourth of the purchase money shall be paid in hand, and interest for the residue for one year in advance, and the residue in ten years from such sale, with like interest annually in advance; and deferred payments shall be regarded as a part of the congressional township school fund, and reported as such by the auditor to the superintendent of public instruction.

If, however, as much as one-fourth part or more of the value of the lands sold, at the time of such sale, consists of the timber growing thereon, the terms of sale must be at least one-half of the purchase money cash in hand, and interest from the residue, for one year, in advance, and the residue in annual payments, in not exceeding ten years from such sale, with like interest annually in advance, and in such case, the terms of sale must be set forth in the notice of sale.

Duty of trustee if purchaser cuts timber.—Whenever the purchaser of any such land shall be proceeding to cut or remove, or threaten to cut or remove from such lands, timber thereon, to such an extent that the land, after the cutting or removal of such timber, will not be equal in value to the amount of purchase money, with interest then remaining unpaid, it shall be the duty of the trustee of the civil township, in which such land is situated, to commence an action, in the name of such township, in the circuit court of the county, to restrain and enjoin the further cutting or removal of such timber.

When deeds to be issued.—When the residue of the purchase money becomes due, the purchaser may retain the same as a loan for a term not exceeding three years, on payments annually made in advance of the interest thereon, at the rate then established by law for the loans of such funds; but he can receive no deed until full payment is made.

Purchasers have the right at any time to pay a part or the whole of the purchase money before it is due, and in case of full payment, will be entitled to deeds immediately.

How purchase will be forfeited.—On failure to pay such annual interest when it becomes due, the contract will become forfeited and the land shall immediately revert to the township, and the auditor and treasurer will proceed forthwith again to sell the same in like manner and on the same terms; if on such second sale the land shall bring more

than sufficient to pay the sum owing therefor, with interest and costs and five per cent. damages, the residue shall, when collected, be paid over to the first purchaser or his legal representatives, but if at any time before the sale takes place the original purchaser will pay the interest due, and all costs, with two per cent. damages on the principal sum, and the interest due and owing for the land, his contract of purchase will be revived.

When purchaser will be liable for waste.—In case of forfeiture, the original purchaser may be sued for waste or unnecessary injury done to the land, and the suit must be brought by the county auditor in the name of the state for the use of the proper congressional township.

When the land may be sold at private sale.—When land offered at public sale remains, the auditor may sell it at private sale for the best price he can get, and for not less than the minimum price affixed thereto, and if he has not effected a sale for four years, the land may be reappraised and again offered at public sale, by order of the county commissioners, as if no previous appraisement and offer of sale had been made, and if not sold, will then again remain subject to private sale by the auditor. No land can be sold for less than one dollar and a quarter per acre.

Auditor to certify sale.—The purchaser, whether at public or private sale, will, on making the first payment, be entitled to receive from the auditor a certified statement of the sale, which such auditor must, before delivering to the purchaser, record in the records of the board of county commissioners, which certificate will entitle such purchaser to a deed upon the full payment of the purchase money, and will entitle him to possession of the land, and until he makes default in the payment of the purchase money, will be entitled to all the rights of possession before existing in such trustee, or township, and to all rights and remedies for rents becoming due, or breaches of covenant occurring after his purchase, under any lease existing at the time of

his purchase, and for all waste committed thereafter. The purchaser may assign his certificate, in writing, but to make such assignment valid, it must be acknowledged before some officer authorized to take acknowledgments of deeds, or before the auditor, and the auditor must in all cases record the assignment. The assignee of the certificate will be entitled to all the rights under it that the original purchaser has.

Liability of purchaser for failure to make first payment.—A purchaser failing to make the first payment, shall pay ten per centum on the sum bid, to be recovered by action before any court having jurisdiction, to be prosecuted by the county auditor in the name of the state for the use of the proper township, and the auditor and treasurer will be competent witnesses.

All payments to be made to county treasurer.—The purchase money and interest, and all costs and damages, shall be paid to the treasurer of the proper county, and his receipt therefor filed, by the person paying, with the county auditor, who shall issue his quietus therefor. And when the final payment is made, the amount named in such receipt must be indorsed on the certificate of purchase by the county auditor.

When deed shall be made.—On full payment of the purchase money, a deed must be issued by the auditor, and must be executed and acknowledged by him, at the cost of the purchaser; and, before delivery, must be recorded on the record book of the county commissioners, and when so executed shall vest the absolute title to the land in the purchaser.

Voters of congressional township may petition for sale of land.—The voters of any congressional township may, in the absence of a vote to sell land, and in lieu thereof, petition the trustee of the township for such sale, and such petition, if signed by a majority of all the voters of the township, shall be filed with the county auditor, and the same

proceeding shall be had as upon a vote of the inhabitants of the township for such sale. Such petition and certificate shall be recorded in the record book of the trustee of the township and of the county auditor, of the investment of funds held for the benefit of common schools and congressional townships.

Loss of certificate of purchase.—In case of the loss of a certificate, before a deed is made, the holder may make proof of such loss by his affidavit, or other competent testimony, which proof must be filed with the auditor, and may, after giving three months' notice of his intention to do so, given in a newspaper printed nearest where the land lies, apply to such auditor for a new certificate, which will be thereupon issued to the person entitled to the same.

When land is sold without title.—When any officer, authorized to sell school lands, has sold lands without title thereto, other lands, equal in value, may be conveyed by such officer or his successor, as may be agreed upon; or, failing to agree, the purchase money, with interest at six per cent., must be refunded to the purchaser.

Before the purchase money is refunded, the prosecuting attorney must investigate the case and certify to the correctness of the claim.

When a new school house is built, the trustees may sell the old one, and the ground whereon it stands, if the township, town, or city has an unconditional title to the property, if it is thought advisable to do so. The sale may be for cash in hand, or on time, and for the highest price that can be obtained, and the purchase money will be a part of the special school revenue.

The language of the statute is not very clear as to whom the purchase money must be paid, and by whom the conveyance shall be executed upon such payment being made, but the meaning seems to be that, in case of the sale of a school house and ground belonging to a township, the trustee will receive the purchase money and execute the deed

to the purchaser, and, in case the property sold belongs to an incorporated town or city, the purchase money should be paid to the treasurer of the school board, who will be authorized to execute the conveyance to the purchaser.

Title of lands for school purposes to be in name of school corporation.[1]—The title to all lands acquired for school purposes, must be conveyed to the township, incorporated town or city, for which it is acquired, in the corporate name of the township, town, or city, which is used for school purposes, for the use of common schools therein. In all cases in which the title to any such land is vested in any other person or corporation, it shall be the duty of the trustees for school purposes, to procure the title to be vested in the township, town, or city.

When and how public school house may be used for private school.—When a school house is unoccupied by a common school, and the people who form the school at such house, desire that a private school be taught therein, and a majority of them make application to the trustee having charge of such house, for the use of it for a private school, it is the duty of the trustee to permit the school house to be used for such private school, by such teacher as may be mentioned in the application, but not for a longer time than until the house may be wanted for a public school; and such permission and use will be upon the condition that the teacher employed in the school shall report, in writing, to the trustee: *First*, The number of teachers employed, distinguishing between male and female. *Second*, The number of pupils admitted into the school within the term, and the average daily attendance. *Third*, The cost of tuition, per pupil, per month, in said school.

When school house may be used for other purposes than schools.—If a majority of the legal voters of any school district desire to use their school house for other purposes than a school, when it is unoccupied for such purpose, the

[1] 27 Ind. 465.

trustee must, on application made to him by such voters, authorize the director to permit such use, giving equal rights to all religious denominations and political parties, without regard to the numerical strength of any religious denomination or political party in such school district.[1]

This, however, only applies to school houses outside of incorporated towns and cities.

When trustees of adjacent townships or counties may build school houses.—The trustees of two or more adjacent counties or townships may establish a new school district, and build a school house therein at the joint expense of their several townships, whenever, in their judgment, it shall appear necessary for the better accommodation of the people of their respective townships. Such necessity must be set forth in a petition by the persons making the requests, to be presented to each of the trustees; and said trustees must, at a time agreed upon by them, not less than ten nor more than thirty days from the time of receiving the petition, hold a joint meeting for the purpose of declaring whether such petition will be granted, and take such further action as the case may require.

How expense must be borne.—Each township must bear such part of the expense of establishing such joint district school, as the number of children of school age residing in each township, and attaching themselves to said new district at the time of its formation, bears to the whole number of children of school age who are attached to said district at its formation, and each township must assume its share of the debt so incurred. But when the school is established it must be supported by the township in which it is established, in the manner already prescribed by law.

When township trustees may issue bonds to build school houses.[2]—An act passed by the legislature at its last session provides as follows:

[1] 48 Ind. 148. [2] Acts 1877, Regular Session, 126.

SECTION I. Whenever any person shall give and bequeath unto trustees any sum of money, exceeding five thousand dollars, for the purpose of erecting a public school building or seminary in any unincorporated town in this state, and upon the express or implied condition, contained in said bequest, that an amount equal thereto shall be raised by the citizens of said town or township for a like purpose, the township trustees of said township, in which said town is situated, shall, upon the petition of a majority of the legal voters of said township, be authorized to prepare, issue, and sell the bonds of said township to secure a loan not exceeding fifteen thousand dollars, in anticipation of the revenue for special school purpose, for the purpose of complying with the condition annexed to such gift or devise, said bonds to bear a rate of interest not exceeding seven per cent. per annum, payable at such time, within seven years from date, as such trustee may determine. *Provided*, That until all the bonds of any one issue shall have been redeemed, such township trustee shall not be authorized to make another issue, nor shall any such bonds be sold at a less rate than ninety-five cents on the dollar.

SEC. II. The whole number of votes cast for candidates for congress, at the last preceding congressional election in the township, shall be deemed to be the whole number of legal voters of such township, a majority of whose names shall be signed to the petition presented to such township trustee, to which petition shall be attached the affidavit or affidavits, as such trustee may deem necessary, of a competent and credible person or persons that the signatures of all the names to said petition are genuine, and that the persons whose names are thereto signed are, as he believes, legal voters of such township.

SEC. III. The township trustee shall record such petition, together with the names attached, in the record book of his township, and carefully file away and preserve said

petition, and shall enter in such record a statement of the time when such petition was filed; and if said trustee shall then be satisfied that said petition contains the names of a majority of the legal voters of said township, he shall then prepare, issue, and sell bonds to the amount petitioned for in such petition, as provided in section one of this act, and shall accurately keep a record of all proceedings in and about the issue and sale of said bonds, to whom and for what amount sold, the rate of interest they bear, and the time when they become due.

School commissioners in cities.[1]—In cities containing a population of thirty thousand or more inhabitants according to the United States census of 1870, the common schools are under the care and management of a board of school commissioners to be composed of as many members as there are wards in such city.

The common council of any city without regard to the population, may, by a majority vote of all the members thereof, order the election of a board of school commissioners, which board, when elected and organized, will supersede the board of school trustees, and perform all the duties required by statute of the board of school trustees.

By an amendment to the original act adopted in 1877, such boards are authorized, when the common school fund is insufficient to continue the schools through the regular school year, to make temporary loans to continue the schools until the receipt of the school revenue of the current year, but no more than is necessary for the purpose, nor more than the amount of such revenue for the current year, shall be borrowed at any one time, and no further loan can be made until such temporary loan is paid.[2]

Trustees and common council may levy tax.—The trustees of the civil townships, the trustees of incorporated towns, and the common councils of cities, have power to levy an-

[1] 1 R. S. 1876, 817. [2] Acts 1877, Regular Session, 123.

nually a tax not exceeding twenty-five cents on each one hundred dollars of taxable property, and twenty-five cents on each taxable poll, to be assessed and collected as the taxes for state and county revenue are assessed and collected, and the funds arising from such taxes, under the charge and control of the same officers, secured by the same guarantees, subject to the same rules and regulations, and applied and expended in the same manner as funds arising from taxation for common school purposes, except that the funds shall be applied and expended in the same civil township, incorporated town or city in which they shall have been assessed and collected.[1]

The supreme court has held that school trustees, in anticipation of the collection of funds arising from this tax, may employ teachers within the year for which the levy is made, to be paid out of such funds when collected.[2]

Township libraries.—Township libraries shall be in charge of the township trustee, and the books can not be sold.

Trustees will be accountable for the preservation of the libraries, may prescribe the time of taking and returning books, assess and recover damage done to them by any persons, and may adopt proper regulations for their preservation and usefulness. He must provide book-cases and blank books, in which to keep an account of books taken out and returned, and report the number each year to the county superintendent, and, at the commencement of each school term, must post up, at each school house, a notice stating where the library is kept, and inviting the free use thereof by persons in their townships.[3] Every family is entitled to two volumes at a time, whether any member thereof attend school or not. The library must be kept at some central place, open throughout the year, Sundays and holidays excepted.

Colored children.[4]—School trustees of townships, cities,

[1] 1 R. S. 1876, 783.
[2] 30 Ind. 178.
[3] 1 R. S. 1876, 809.
[4] Acts 1877, Regular Session, 124.

and towns are required to organize colored children into separate schools, having all the rights, privileges, and advantages of the white schools, and if such schools are not provided, they must be permitted to attend the public schools with white children.

When a child attending a colored school shall, on examination and certificate of his teacher, show to the trustee that he has made sufficient advancement to be placed in a higher grade than is afforded by the colored school, such pupil must be permitted to enter the school provided for white children of a like grade, and no distinction must be made on account of race or color.

What shall be taught in common schools.—The common schools must be taught in the English language, and trustees must require orthography, reading, writing, arithmetic, English grammar, physiology, and the history of the United States to be taught in all the schools, unless the inhabitants of any school district have, in the mode prescribed by law, designated a less number of branches to be taught in the school of such district.

Trustees may also, and it is their duty to require other branches of learning and other languages to be taught when the advancement of pupils requires it. Whenever, in any district, before a teacher is employed, the parents or guardians of twenty-five children who are to attend the school demand it, the German language must be taught in such school without charge. Trustees must also require teachers to instruct pupils in good behavior and correct deportment.

Bible in the public schools.—By express provision of the statute, the exclusion of the bible from the public schools in this state is forbidden. The statute does not, however, in terms, require that it shall be introduced, and, in the absence of any demand therefor, by any person interested, the reading of the Bible may be dispensed with. The department of public instruction construes the law to be that

it is for the teachers to determine, in each particular case, whether the bible shall be read. Very much should be left to the judgment and conscience of teachers in the matter of bible reading, but the language of the statute is broad enough to make it obligatory upon them, when required by the trustees, or persons sending children to the school, to require of any teacher the use of the bible in their schools.

The constitution of the state makes it the duty of the general assembly to provide for the moral, as well as the intellectual improvement of the people through the agency of common schools, but not for their religious training.[1]

Teachers must have a good moral character, but are not required to have any religious belief. The statute does not require, even by implication, that there shall be any devotional exercises or religious instruction in the schools, nor does it prohibit it. The legislature, in the revision of the statutes of 1852, made provision for the reading of the scriptures, in case it is desired, in any of the common schools, and it has been so far acquiesced in by the people, that no question in regard to it has, as yet, come before the supreme court.

Government of schools.—In addition to the suspension or dismissal of pupils for misconduct, teachers have the legal right to inflict corporal punishment, in moderation, although the tendency of public sentiment seems to be against it.[2]

The following extract from an opinion pronounced by one of the circuit judges of this state, very clearly states the law upon this subject:

"A school teacher, while in the school room, is responsible for maintaining good order, and he must be the judge, to some extent, of the degree and nature of the punishment required when his authority is set at defiance, and although he will be held amenable to the law for any abuse

[1] 1 R. S. 1876, 38. [2] 4 Ind. 290, 632.

of this discretion, still he will not be held liable on the ground of excessive punishment, unless the punishment is clearly excessive, and would be held so in the judgment of reasonable men.

"A teacher, in the exercise of the power of corporal punishment, must not make such power a pretext for cruelty and oppression; but the cause must be sufficient, the instrument suitable, and the manner and extent of the correction, the part of the person to which it is applied, and the temper in which it is inflicted, should be distinguished with the kindness, prudence, and propriety which become the station.

"A school teacher is liable criminally if, in inflicting punishment upon his pupil, he goes beyond the limit of reasonable castigation, and, either in the mode or degree of correction, is guilty of any unreasonable or disproportionate violence or force, and whether the punishment was excessive under the circumstances, is a question for the jury."

Penalty for insulting teacher in presence of pupils.—In order to protect teachers from annoyance and insult in the presence of pupils, the statute provides, that if any parent, guardian, or other person, from any cause, fancied or real, visit a school with the avowed intention of upbraiding or insulting the teacher in the presence of the school, and shall so upbraid or insult a teacher, such person, for such conduct, shall be liable to a fine of not more than twenty-five dollars, which, when collected, shall go into the general tuition revenue.[1]

In a prosecution for this offense, it would be necessary to a conviction, that the proof should show, not only that the party charged insulted and upbraided the teacher in the presence of the school, but that he went to the school room for the avowed purpose of doing so.

The statute does not seem to apply to a case where a person may happen to go to a school for a lawful and proper

[1] 1 R. S. 1876, 814.

purpose, and, while there, from any cause, should insult the teacher, his visit to the school being in no way caused by ill feeling toward the teacher.

Length of school terms.—A school term of three months is sixty days; a school month is twenty days, and a school week is five days.

The books, papers, and accounts of any trustee, relative to schools, are open to the inspection of the county superintendent, auditor, and commissioners, and, for the purpose of such inspection, they may summon any trustee before them, and, on three days' notice, require such books and papers to be produced. If the books and accounts have been imperfectly kept, the county board may correct them, and if any fraud appear, the guilty party shall be removed from office.

Suits by and against school corporations.—Process in suits against a school township, town, or city, must be by summons, served by leaving a copy thereof with the trustee of a township, or with the president of the board of trustees of a city or town, ten days before the return day thereof. In case of an appeal, a similar notice must be given. The statute does not seem to provide for service of a summons by reading or leaving a copy thereof at the usual or last place of residence of a trustee, and such service would not be sufficient.

Suits brought in behalf of any school corporation must be brought in the name of the state, for the use of the township, town, or city, as the case may be.

Appeals from township trustee and superintendent.—Appeals are allowed from all decisions of trustees relative to school matters, to the county superintendent, who will receive and determine such appeals according to the rules governing appeals from justices of the peace to the circuit court, so far as applicable, and their decisions of all local questions relating to the legality of school meetings, establishment of schools, and the location, building, repair or

removal of school houses, or transfers of persons for school purposes, and designation and dismissal of teachers, shall be final. In all other cases appeals are allowed from the decisions of the county superintendent to the superintendent of public instruction, and the rules that govern appeals from justices of the peace to the circuit court as to the time of appeal, giving bond, etc., shall govern.

Any person who shall sue for or on account of any decision, act, or refusal or neglect of duties of a township trustee, for which he might have had an appeal, can not recover costs even if he should be successful in his action.

The object of this requirement of the statute is to discourage litigation in the courts in reference to questions arising under the school law, which is always attended with considerable expense, and often with great delay.

When school officers may administer oaths.—All school officers have authority to administer oaths in all matters relative to school business arising in the discharge of their official duties, pertaining to their respective offices.

Doors of school houses.—The statute requires that the doors of all school rooms in which scholars assemble, unless such rooms be upon the ground floor, shall open outwardly, and all school trustees who neglect to have such doors so hung that they will open as required by the statute will be liable to a fine of not exceeding one thousand dollars, to which may be added imprisonment in the county jail not exceeding six months.[1]

The object of this statute is to afford pupils an easy means of escape from the school room in case the building should take fire.

[1] Acts 1877, Special Session, 59.

CHAPTER XIV.

SUPERVISORS.

Election of.—By an act of the legislature, approved March 5, 1877,[1] it is provided, that there shall be an election for supervisors of highways, by the voters of the several highway districts, at the October election, 1878, and biennially thereafter at the township elections, and that all supervisors now in office shall hold until that time, so that supervisors will not be chosen at the township elections until 1880, and they will hold their office for two years.

Must be a freehold resident of district.—Each voter shall be entitled to vote for a supervisor in his road district, and no person is eligible to the office unless he be a freehold resident of such district. No ticket must contain the name of more than one person voted for as supervisor.

Vacancy, how filled.—In case of a failure on the part of the voters to elect a supervisor, or if, from any cause, a vacancy in the office occur, the township trustee, as soon as he is informed of the fact, must fill the vacancy by appointment. The trustee must issue a certificate of appointment and deliver it to a constable of the township, within three days after making the appointment, who must deliver it to the person appointed, and make return thereof to the trustee within seven days from the time the certificate of appointment came to his hands.

The act above referred to also provides that the person so appointed will hold until the next annual election; but as the statute does not provide for annual elections, the biennial township election is probably intended, and the statute should be so construed.[2]

[1] Acts 1877, Regular Session, 128. [2] Ibid, 58.

Penalty for failing to serve as supervisor.—Any person who is eligible to the office of supervisor, and who is liable to perform highway labor, and who has not served in that capacity within six years, who shall fail to accept the office of supervisor for his district and qualify and serve as such, when duly elected or appointed, must pay into the township treasury, within twenty days thereafter, the sum of six dollars, or he will be liable to an action therefor, to be instituted before any justice of the peace of the township by the township trustee, in the name of the township, or if the office of trustee be vacant at the time, then by the county auditor. When collected, the money must be paid to the supervisor of the proper road district, or if the office be vacant, then to the proper township trustee for the benefit of such road district.

Must take oath.—Before entering upon the performance of the duties of the office, he must take an oath or affirmation for the faithful performance thereof before some person authorized to administer oaths.

Duties of supervisors.—First. He must carry into effect all the orders of the trustee of the township in which his road district is situated, touching the highways and bridges therein, and shall keep them in good repair.

Second. He must call out all able-bodied male persons in his district, except insane persons, idiots, deaf and dumb and blind persons, who are residents of the state, and over twenty-one and under fifty years of age, and not exempt from such labor, during not less than two nor more than four days in the months of April, May, or June of each year, and must require each person to work eight hours per day upon the highways in his district.

Third. He must superintend the work on the highways, and see that it is faithfully performed, and must sue for and collect all fines and commutation money due his district.

Supervisors also have the right to require persons perorming labor on the highways to furnish any tools which

may be necessary in performing labor on the highways, provided the demand therefor be reasonable, and may also require any such person who may be the owner of a horse or ox team to furnish the same, and also a driver, and a plow, cart, or wagon, to be used in such labor, but for every day's labor the supervisor must receipt to the owner for three days' labor.

Notice to persons to work on highways.—The supervisor must give at least three days' verbal or written notice to persons liable to perform labor on the highways, prior to the time designated for such work.

If the notice is verbal, it should be given directly to the person required to work; if written, it should be personally delivered to him, or left at his residence. It will be sufficient in point of form if it states the time and place where such labor is to be done, and if the person is required to produce any tools or team it should be specified in the notice.

Substitutes may be furnished.—Persons liable to perform labor, when notified, may appear in person or by an able-bodied substitute, and the person or the substitute must actually labor eight hours each day, under a penalty of twenty-five cents for every hour such person or substitute may be in default.

Forfeiture for failure to labor faithfully.—If such person or substitute fail to labor faithfully, or remain idle, or hinder others from working, he shall forfeit for each offense the sum of one dollar, to be collected as other fines and forfeitures under the supervisors' act, and he must be discharged without credit for the work he may have done.

Suit to be brought against persons failing to labor.—The supervisor must, within ten days after warning the persons liable to work in his district, bring suit, in the name of the township in which such district is situated, against such persons as fail to work or pay the commutation money therefor, before any justice of the peace of the township,

and in bringing such suit it shall only be necessary for an account stating the number of days which each person failed to labor, and charging one dollar per day each therefor, to be filed with the justice as a cause of action, and in case of recovery, the judgment must be in the name of the township, for one dollar for each day the defendant so failed, and costs of suit, and no stay of execution or benefit of valuation or appraisement or exemption laws will be allowed, all of which should be specified in the judgment by the justice.

Penalty for failure to bring suit.—If the supervisor fail to bring the action within the time required, he will forfeit and become liable to pay the sum of ten dollars, and suit may be brought against him in the name of the township, but the supervisor is not required to bring suit against persons from whom there is no probability of collecting, or who at the time they were required to work were sick, or otherwise disabled from labor, but if such sick or disabled person be liable to pay commutation, he shall so pay, or the supervisor must sue therefor within sixty days from the time of giving the notice.

Persons liable to work may pay commutation.—Any person liable to work on the highways may be exempt therefrom by paying to the supervisor of his district, at any time before suit is brought, the sum of one dollar for each day he is liable to work, and the supervisor must execute a receipt to such person, and may employ some person to work out such money on the highways of his district at the rate of one dollar per day, or, failing to do so, must pay the money into the township treasury, for the benefit of his road district.

Who may be exempt.—Any person liable to work on the highways may be exempt therefrom by making application to the township trustee, and showing to the satisfaction of the trustee that he is unable to perform ordinary labor, from bodily infirmities, and that he is too poor to

pay the commutation therefor; or, that he belongs to a legally organized fire company; and, in such cases, it is the duty of the trustee to execute to such persons a certificate thereof, which, on presentation to the supervisor, shall entitle them to exemption.[1]

Who are deemed able-bodied.—Any person who is able to perform an ordinary day's labor is declared by statute to be liable to perform labor on the highways, although such person may be, in some respects, deformed.

How money recovered shall be expended.—All money collected by suit from persons failing to work on highways, and from supervisors for neglect to bring suits therefor, shall be received and expended by the proper supervisor in the improvement of the highways in the district in which such forfeitures occurred. And the supervisor, within ten days after the receipt of any money which he is not required to pay to the township trustee, must proceed to employ laborers to repair the highways in his district, and he must pay no more wages to such laborers than is customary in his district for similar purposes; but supervisors shall in no case neglect to make such repairs. The meaning of the statute seems to be that if labor can not be procured by the supervisor for the customary wages paid for labor in his district, he will be authorized to pay enough more to procure the labor; and if such labor and the road tax, where such tax has been assessed, are insufficient to complete such repairing, he must call out the persons in his district liable to perform such work, for that purpose, and if such persons refuse to work, they will be liable to pay the commutation money therefor, and suits may be brought and recoveries had, as in other cases of failure to perform highway labor.

Certificate to be given to persons performing excess of work.—When extra labor is required to be performed on the highways, but not sufficient to require all the hands in the dis-

[1] 23 Ind. 479.

trict, or an equal amount of labor from each, the supervisor may assess the same upon such number of persons as he may deem sufficient, and for the excess of work performed by any one over the average amount performed by all, he must give to the person performing such labor a certificate of the amount thereof, which will be a credit to the holder thereof, on account of any subsequent labor to be done on the highways of his district.

When supervisor may enter on adjoining lands.—When necessary for the construction or repair of any ditches, drains, dams, or highways, the supervisor, or any person by his order, is authorized by statute to enter upon any lands adjoining or near to the locality where such construction or repairs are to be done, and dig and remove any earth, gravel, sand, or stone, and to cut and remove any wood or trees that may be necessary for the construction, preservation or repair of such highways.[1] Before entering upon lands to take materials therefrom, it is the duty of the supervisor to make demand of the owner for the material needed, and if such owner assent, he may point out to the supervisor the material and the place from which it may be taken, and if it be fit for the purpose intended, and accessible, such material must be taken, otherwise the supervisor may select material from another place. If such owner refuse his consent, the supervisor may then notify him of his intention to enter upon his lands, and for what purpose and for what length of time he will occupy the same, and shall point out the land to be occupied or the material to be taken. Immediately after the removal of such material the supervisor must, with the assistance of two disinterested persons, proceed to the locality and assess the damages in such sum as shall seem to them right and proper, in favor of the owner, and he must report the amount of damages assessed to the township trustee within ten days after such assessment, first giving notice thereof to the party damaged.

[1] 11 Ind. 420.

The supervisor must also notify the owner of the time and place of the meeting of the appraisers for the assessment of damages; and he must have the opportunity to select one appraiser, and he also has the right to be present at the assessment, and at the time of such assessment to offer evidence as to the amount of damages.

The township trustee must pay the damages assessed, first giving notice to the party damaged, unless he regards the amount as unreasonably large, in which case he may reduce it.[1]

When material should be taken from roadway.—No person's land, however, may be entered and material taken therefrom, if it can be procured from the roadway within a convenient distance in the district, nor when drainage can be made on the roadway at a cost not exceeding the cost and damages of entering on private lands.

The evident meaning of the statute is that supervisors should not enter upon private lands to obtain material or make drains, except in cases where it is clearly necessary.

Guide boards must be maintained.—It is the duty of every supervisor to see that guide boards are maintained at the forks and crossings of every road in his district, with plain inscriptions, and which may be easily read, directing the way and stating the distance to the most noted place on each road, respectively, for which he is entitled to be paid by the township trustee out of the township treasury.

When trees within the limits of new highway may be removed by owner.—All timber standing or lying on the land over which any highway is laid out which it will be necessary to remove in opening such highway, shall belong to the owner of the land, if he will take it away before the supervisor is required to open the highway, unless the same is necessary to be used in the construction of the highway. The owner of the land being compensated by the damage

[1] 9 Ind. 558; 11 Ind. 420; 4 Ind. 209; 26 Ind. 53.

assessed in his favor on account of the opening of the highway, the supervisor will have the right to take any such timber or other material that may be needed for the construction of the highway, or any bridge on such land.

When owners of farms must remove obstructions.—When any highway running through or bordering on any farm or plantation shall become obstructed, the owner or occupant of such farm or plantation must remove the obstruction as soon as it shall come to his knowledge, and the supervisor of his district must allow him a reasonable credit therefor upon his liability to work on the highways, unless the obstruction has been caused by his act, in which case he will be required to remove the same without credit.

Road tax may be worked out.—The supervisor must obtain the list of the road tax, which may be assessed by the township trustee, with the concurrence of the board of county commissioners, for road purposes, which list must set forth the amount of tax assessed against each individual. The tax on real estate must be worked out in the district where the land lies, and the tax assessed on personal property in the district where the owner resides, at the rate of one dollar per day, and the certificate of the supervisor of the amount worked will be taken by the county treasurer in payment of such tax.

How tax must be expended.—The township trustee must order the expenditure of such tax, when collected, in the improvement of the highways of his township, under such regulations as he shall deem most expedient for the public interest, and for that purpose is authorized to pay such sum on the order of the supervisors of the township as their respective districts may require.

The orders of the supervisors drawn upon the trustee, must distinctly state the service performed by the persons to whom they are given.

Trustees may let contract for repairs.—Township trustees may let the contract of keeping highways and bridges in

repair in their respective townships to the lowest responsible bidder, and for that purpose they may cause notices to be posted in three of the most public places in the township, that proposals therefor will be received under such regulations as they may prescribe at the time and place to be by them designated.

The trustee must, either through the supervisors or by contracts made with responsible persons, see that the tax collected is expended in making necessary repairs and improvements of the roads and bridges in the several road districts of his township.

When commissioners shall perform duty of trustee.—In any township in this state which is not organized under the provisions of the statute providing for the election of a trustee of such township, all duties required to be performed, and all rights accruing to the township trustee, shall be performed by, and accrue to, the board of commissioners of the county.

Penalty for injuring dam, drain, etc.—Any person who shall willfully injure any dam, drain, embankment, ditch, or other construction, made for the protection of any highway or bridge, or who shall willfully destroy any guide-post, or deface any device or inscription, or who shall unnecessarily, and to the hindrance of passengers, obstruct any highway or bridge, or who shall, when driving any vehicle, fail to pass to the right when meeting another vehicle, so as to allow it to pass without injury, will, for every such offense, forfeit the sum of five dollars, to be recovered by suit before a justice of the peace of the county, in the name of the trustee of the township, by the supervisor of the district; and, in case of such obstruction, for every day the same is continued, the sum of five dollars shall be recovered; and, in all such cases, the supervisor, within three days after receiving information of any such forfeiture, shall commence such suit, and the sum recovered thereon shall be paid to the trustee of the township for the benefit of the

highways of the district in which the forfeiture occurred.[1]

FORM OF COMPLAINT FOR PENALTY FOR OBSTRUCTING HIGHWAYS.

Samuel McElfresh, Trustee of Lawrenceburgh Township, of Dearborn county, by Job Miller, Supervisor of Road District Number 5,
v.
Bailey H. Lowe.

Before Sebastian Green, *Justice of the Peace.*

Samuel McElfresh, Trustee of Lawrenceburgh township, of Dearborn county, by Job Miller, Supervisor of Highways in Road District Number 5, in said township, complains of Bailey H. Lowe, and says that on the 12th day of September, 1878, the defendant unnecessarily and to the hindrance of passengers obstructed a certain public highway in said township in the county of Dearborn, leading from the city of Lawrenceburgh to Hardinsburgh, and known as the "Canal road," by building a fence upon and across said road at a point within one-fourth of a mile south of the said town of Hardinsburgh, and within the limits of said road district, and that the defendant continued said obstruction from said 12th day of September until the 15th day of September, 1878; wherefore the plaintiff demands judgment for fifteen dollars, for the benefit of the highways in said road district.

SAMUEL MCELFRESH,
Trustee,
By JOB MILLER,
Supervisor.

All suits commenced by one supervisor may be continued by his successor, and no costs can be taxed against him,

[1] 27 Ind. 56–86; 53 Ind. 18; 5 Ind. 459; 15 Ind. 226.

but judgment for costs should be rendered against the township, if the suit should be determined for the defendant.

Penalty for supervisor failing in duty.—If any supervisor fail to use due diligence in keeping the highways in his district in good repair, under the regulations prescribed by law, or fail to call out the persons liable to work on the highways of his district, the number of days required by law, unless the tax assessed for the repair of such highways be sufficient therefor, or who shall fail to bring suit for any of the forfeitures provided for in the supervisors' act, shall forfeit the sum of ten dollars, to be recovered before any justice of the county, in the name of the township, by the trustee thereof; and such trustee must bring suit within three days after receiving any information of such forfeiture.

Successor to collect delinquencies.—The successor in office of any supervisor must collect all delinquencies accruing during the term of his predecessors, and all judgments rendered in their favor, and remaining uncollected, and on going out of office must hand over to his successor all books, papers, money, and tools in his possession, pertaining to his office, when called for.

How money in county treasury, belonging to road district, must be applied.—All money in the treasury of any county, belonging to a road district thereof, must be paid over to the trustee of the township in which such district is situated, on the warrant of the proper auditor, and must be applied for the benefit of such district, and such money must be paid out on the order of the supervisor or supervisors of such township.

Money for improvement of roads, when and how expended.—All money intended for the improvement of roads must be expended thereon, on or before the 15th day of September in each year.[1] If, however, any of such tax is in the

[1] 5 Ind. 515.

county treasury which has been collected from the tax-payers of the property within any incorporated town, or belonging to such town, such tax shall, on the warrant of the auditor, be paid to the treasurer of the town, and it must be expended for the benefit of the streets and alleys in such town as the trustees thereof may direct.

Supervisor must make report.—Each supervisor must, on the last Saturday in September in each year, make a full and succinct report under oath of his proceedings, showing the names of the persons liable to, or who have performed labor on the roads in his district, the amount of commutation received, and from whom received, and also the whole amount of money received from all other sources whatever, and how it has been expended, and must, on the same day, file the report with the township trustee and pay to him any balance that may be in his hands.

Duty of trustee when report is not made.—The township trustee must audit such report, and if any supervisor fail to make report the trustee must bring suit against him before a justice of the peace of the township, in the name thereof, and may recover, in such action, the balance in the supervisor's hands, and interest upon it, from the date it was received.

Supervisor responsible for tools.—The supervisor is responsible for the care and safe-keeping of all tools belonging to his district, and on going out of office must report the number and kind thereof to the township trustee under oath, and the trustee must charge each supervisor, on coming into the office, with the whole amount of tools in his district, as shown by such report, and such supervisor will be liable for any loss or damage to the tools belonging to his district occasioned by his neglect, and suit may be brought therefor, in the name of the township, upon the complaint of the trustee, before any justice of the peace in such township.

Compensation of supervisors.—For all necessary service

performed by supervisors they are entitled to receive one dollar per day, but are not entitled to receive any compensation for the number of days which other persons in their districts, liable to perform highway labor, are employed.

His duties as to roads in incorporated towns.—When any road district or part thereof is within the limits of an incorporated town, the supervisor thereof, in working such portion of the roads as lie within the limits of the town, must work the same according to the plan and under the direction of the board of trustees of such town.[1]

Duty of supervisor where road is changed by railroad.—When any of the highways within the state have been or may hereafter be changed from their original bed by the construction or running of railroads, supervisors within their respective districts have power, and it is made their duty, to open and keep in repair any roads so changed the same as if they remained where they were originally located.[2]

When the public road running along the bank of a stream becomes unsafe or inconvenient for use as a public highway by the falling away of the bank, it will be the duty of the supervisor having such road in charge, forthwith to give the owner or occupant of the land over which the road passes notice to remove his fence back from the bank of the stream, far enough to admit of the opening and construction of a road, at least forty feet wide; and if the owner or occupant of the land should neglect to remove the fence, as required by the notice, it will be the duty of the supervisor to call out the hands liable to work on roads in his road district, and forthwith remove the fence, doing to the owner or occupant no greater damage than is necessary for the removal of the fence.

If any dwelling house or building should stand so near the stream that a sufficient space is not left for the road,

[1] 1 R. S. 1876, 862. [2] 1 R. S. 1876, 859.

then the supervisor may open the road in the rear of the dwelling house or other building.

When the fence is removed, or road changed to the rear of the buildings, the owner of the land may file with the board of commissioners of the county where the same is situated, a claim for damages for removing the fence, or change of the road, and for the use of the ground over which the road shall pass; and upon the filing of the claim it will be the duty of the board of commissioners to appoint two reputable freeholders of the county to view the premises, and assess the damages of the claimant by reason of the appropriation of his land for the road, and the removal of his fence.

The viewers must be sworn to faithfully and impartially assess the claimant's damages, and must make the assessment upon actual view of the premises, and report the same to the board of commissioners, and such board may allow or order the same to be paid out of the county treasury, or, if they deem such assessment to be too high, may, in their discretion, appoint viewers to make the assessment, who shall be sworn, and proceed in like manner to assess such damages, and report the same to the board, and such assessment must be paid out of the county treasury.

If the claimant is dissatisfied with the assessment, he may in like manner have a review of the premises, and another assessment of damages, but, if the re-assessment shall be for no greater sum than the first assessment, he must pay the costs of the review.

Liability of supervisor.—If any supervisor fail to discharge any duty required of him by law, he will be guilty of a misdemeanor, and be subject to a fine of not less than five dollars, nor more than one hundred dollars.[1] But he can not be sued by an individual for failing to keep the highways and bridges of his district in repair.[2]

[1] 2 R. S. 1876, 480. [2] 2 Ind. 143.

Nor can he be sued in a civil action upon the relation of any one for any failure to do his duty.[1]

He may, however, be sued for unnecessarily entering upon land adjoining a highway and taking material therefrom, alleged to be for the repair of such highway, by the party injured.[2]

And in case a supervisor fails to perform a duty for which the statute provides a forfeiture, a suit may be maintained against him for such forfeiture, in the name of the township, by the trustee, and he may, in addition, be prosecuted for a misdemeanor, in the name of the state, for the same omission of duty.[3]

When suits for penalty may be brought.—Where the statute provides a penalty for the violation of any provision of the supervisor's act, by any officer or person, and requires that suit shall be brought therefor within a given period of time, such provision must not be construed to limit the power to bring the action to such period. It may be prosecuted after the the time has elapsed, as well as before, but the officer who failed to bring the suit within the period fixed by statute will be subject to a penalty for such dereliction of duty.[4]

[1] 11 Ind. 216. [2] 4 Ind. 209. [3] 5 Ind. 515. [4] 27 Ind. 56.

CHAPTER XV.

TOWNS.

Survey of territory.[1]—It is provided by statute, that persons intending to make application for the incorporation of a town must cause an accurate survey and map to be made of the territory intended to be embraced in the limits of such town. The survey must be made by a practical surveyor, and must show the courses and distances of the boundaries thereof, and the quantity of land contained therein, and the accuracy of the survey and map must be shown by the affidavit of the surveyor indorsed thereon, or annexed thereto, and may be in the following form :[1]

Form of Surveyor's Affidavit.

I, George W. Haire, a practical surveyor, do solemnly swear [*or*, affirm] that the survey and map hereto attached are correct, and accurately set forth and describe the territory intended to be embraced in the limits of a town proposed to be incorporated in Lawrenceburgh township in said county.

George W. Haire.

Census to be taken.—An accurate census of the resident population of the territory must also be taken on a day not more than thirty days before the time of making application to the board of commissioners, as will be presently explained, which census must exhibit the name of every head of a family, residing within the territory on the day the census is made, and the number of persons belonging to every such family, and it must be verified by the oath or affirmation of the person taking the census.

[1] 1 R. S. 1876, 874.

The statute must be construed to mean that all persons residing within the territory shall be included in the census. Hence, persons who may be boarding, and not strictly members of any family, provided they are actual residents of the territory, should be enumerated.

The mode of taking the census is very simple. All that the statute requires, is that the name of every head of a family within the territory, shall be set down in one column, and the number of persons belonging to such family shall be set down in another.

The names of such persons need not be stated. The names of the heads of families enumerated should be numbered, and, when the census is completed, should be added up as well as the number of persons in each family.

The census must show the population of the territory on a particular day.

When completed, the person taking the census should make an affidavit, to be attached to such census, in the following form:

Form of Affidavit to Census

State of Indiana, Dearborn County:

Lorenzo D. Drain, being duly sworn, on oath states that the above is a full, true, and correct census, of all the resident population of the above-described territory, on the 15th day of September, 1877, and correctly and accurately exhibits the name of every head of a family residing in said territory, and also a correct statement of the number of persons belonging to such families on said day.

Lorenzo D. Drain.

Subscribed and sworn to, etc.

The survey map and census, when completed and verified, must be left in some convenient place within the territory, for a period of not less than twenty days, and, during such time, must be open to examination by any person

having an interest in the proposed incorporation of the town.

Petition to board of commissioners.—The persons desiring the incorporation of such town, must then make application, by petition, to the board of commissioners of the county, setting forth the boundaries of the territory which it is proposed to embrace within the limits of the town, the quantity of land included according to the survey, and the resident population within the territory, as shown by the census.

The petition must be subscribed by the applicants, and by not less than one-third of the whole number of qualified voters residing within the territory. The facts stated in the petition must be verified by oath or affirmation.

The petition may be as follows:

FORM OF PETITION FOR THE INCORPORATION OF A TOWN.

To the Honorable Board of Commissioners of Dearborn County, State of Indiana.

Your petitioners respectfully represent to your board, that they reside within, and constitute not less than one-third of the qualified voters of, the following territory, which is situated in Lawrenceburgh township, county of Dearborn, and State of Indiana, and which is bounded as follows: [*Here set out the boundaries.*] And they further show that, on the 16th day of September, 1877, they caused an accurate survey and map to be made of said territory, by one George W. Haire, a practical surveyor, by which it appears that there is contained within said boundaries, fifteen acres of land, which survey and map, duly verified by the affidavit of said surveyor, is hereto attached as part hereof, as exhibit (A). And your petitioners further show that, on the 26th day of September, 1877, they caused an accurate census of the resident population of said territory to be taken by one Lorenzo D. Drain, which census, duly verified, is also hereto attached and made part hereof, as ex-

hibit (B); and that, as appears by said census, said territory, on the said last-named day, contained a resident population of five hundred.

Your petitioners further show, that they desire the incorporation of a town, by the name of Greendale, embracing the limits of the territory above described, and they pray that your honorable board will make an order declaring that said territory shall, with the assent of the qualified voters thereof, be an incorporated town by the name aforesaid, in accordance with the statute in such case provided.

FORM OF AFFIDAVIT TO PETITION.

State of Indiana, Dearborn County:

Edwin B. Dobell and William Probasco, two of the persons who signed the petition hereto attached, as applicants for the organization of a town within the territory in said petition described, being duly sworn, on oath say, that the facts alleged and set forth in said petition are true.

EDWIN B. DOBELL,
WILLIAM PROBASCO.

Subscribed and sworn to, etc.

Notice of presentation of petition.—The statute seems, only inferentially, to require that any notice of the presentation of the petition to the county board shall be given.[1] From the nature of the proceedings the persons whose interests are to be affected will hardly fail to be advised of the steps being taken. Some notice, however, of the time of making the application to the board ought to be given. The statute making no provision for giving the notice, it is suggested that a written statement of the time when the application will be presented to the commissioners be deposited with the map, survey, and census, when they are left for the inspection of persons interested in the organization of the town, or that it be posted up at such place. The

[1] 1 R. S. 1876, 874, sec. 4.

board should not hear the petition until satisfied that proper notice has been given, of the sufficiency of which the commissioners must determine.

Preliminary proof to be made by applicants.—Before hearing the petition, the commissioners must require proof, either by affidavit or by the oral examination of witnesses before them, that the survey, map, and census were left at a convenient place within the territory, for not less than twenty days, for examination by all persons interested in the incorporation of the town; and, if the board is satisfied that the requirements of the statute have been complied with, must then make an order declaring that the territory shall, with the assent of the qualified voters thereof, as hereafter explained, be an incorporated town by the name specified in the application, which must be different from the name of every other town in the state. The board of trustees must also include in the order a notice for a meeting of the qualified voters residing in the territory, at a convenient place therein to be named by the board, on some day within one month from the adoption of the order, for the purpose of enabling such voters to determine whether the territory shall be an incorporated town.[1]

Notice of meeting.—The board must cause ten days' notice of the meeting to be given by publication in a newspaper, if one be published in the territory, and by posting up copies of the notice in ten public places in such territory. One insertion of the notice in a newspaper will be a sufficient publication, and if no paper is published within the limits of the proposed town, it will be sufficient to post up the notices.

Meeting of voters.—The voters must meet on the day and at the place named in the notice, and proceed to elect three persons, qualified voters of the territory, to be inspectors, who should be qualified in the same manner as inspectors

[1] 47 Ind. 274.

and judges are qualified at general elections, except they should perhaps be sworn by some officer authorized to administer oaths, as the statute makes no provision that they shall administer the oath to each other, as in case of other elections. They will elect one of their number clerk, and forthwith proclaim that the poll is opened, and that they are ready to receive the ballots of voters. The polls must be opened at nine o'clock in the forenoon, and remain open until four o'clock in the afternoon, when they must be closed.

How ballots shall be cast.—The qualified voters of the territory shall then proceed to vote by ballot, having on the tickets the word "yes," or the word "no;" and if a majority of the ballots given at such meeting shall have thereon the word "no," the voters of such territory shall be deemed not to have assented to the incorporation thereof as a town, and no further proceedings shall be had in relation thereto; but, if a majority of such ballots shall have thereon the word "yes," such territory shall, from that time, be deemed an incorporated town, to have continuance thereafter by the name and style specified in the order made by the board of county commissioners, and the inspectors of such meeting shall make a statement, showing the whole number of ballots given at such meeting, the number having the word "yes" thereon, and the number having the word "no" thereon, which statement shall be verified by the affidavit of such inspectors, and shall be returned to such board of commissioners, at their next session, who, if satisfied of the legality of such election, shall make an order declaring that said town has been incorporated by the name adopted.[1]

This order of the board will be conclusive of the fact of the incorporation of the town, in all suits by and against such town, and the existence of the corporation will be taken notice of in all courts and places in the state without specially alleging the fact.

[1] 38 Ind. 41.

Inspectors must divide town into districts.—The inspectors, after they have returned such statement to the board of county commissioners, must proceed to divide the town into not less than three, nor more than seven, districts, having due regard to the equitable apportionment of population among the districts, and the convenience and contiguity of each district.

First election for town officers.—The statute provides, that the inspectors chosen at the meeting of voters to determine whether they will assent to the organization of the town, must preside at the first election for town officers, and will serve as inspectors thereof, and in receiving and canvassing votes will be governed by the laws then existing, for the election of township officers, so far as they may be applicable.

Subsequent elections for town officers.—Upon the subject of the election of town officers, after the first election, the statute further provides that an election shall be held for such officers, annually, on the first Monday in May, and that, at every such election, the preceding board of trustees, or any three of them, should act as the inspectors, and that at all such elections the polls should be opened at nine o'clock in the forenoon, and not finally closed until four o'clock in the afternoon.

This was construed by the supreme court to mean that there could be but one poll opened in the town, and that an election held at which there was a voting place in each district or ward was illegal.[1] But since that decision was rendered, the legislature has adopted a new statute upon the subject of elections, as follows:

"In city and town elections, each ward shall constitute a precinct: *Provided*, That the common council of any city, or the trustees of any town, may make such changes in the places of holding their elections, or divisions in precincts, in their respective cities and towns, as public convenience and

[1] 49 Ind. 62.

public good may require: *Provided*, That no such changes or divisions shall be made without giving due notice, at least one month before any election, either by publication in the newspaper having the largest circulation in the county in which such city or town is situated, or by posters put up in four of the most public places in such precinct.

"Such council or trustees shall appoint three qualified voters in each precinct, one to act as inspector, and two as judges of elections, who shall have been freeholders and resident householders in such precinct for at least one year next preceding any election at which they may officiate.

"Such inspectors and judges, when so appointed, shall constitute a board of election, which board of election shall have all the powers, and shall perform all the duties of boards of elections as hereinbefore specified."[1]

This seems to change the law as it is found in the act for the incorporation of towns, and to require that a poll must be opened in each district or ward of the town.

What officers to be elected.—There must be elected at the first and every subsequent election, one trustee for each district in the town, and such trustees must reside in the district from which they are chosen; and also, a clerk, assessor, treasurer, and marshal, who will, respectively, hold their offices until the first Monday in May next following, and until their successors are elected and qualified. The offices of clerk, assessor, treasurer, and marshal may all be held by the same person, if the board of trustees so order.

How result shall be determined.—The person having the greatest number of votes for each office, as designated by the ballot for such office, shall be declared elected, and if two or more persons shall have an equal, and the highest, number of votes for the same office, the inspectors must, forthwith, determine, by lot, which shall be deemed elected, and the inspectors must make a certified statement, over their own signatures, of the persons elected to fill the sev-

[1] Acts 1877, Special Session, 41, sec. 8.

eral offices in the term, and file the same with the clerk of the circuit court of the county, within ten days after the day of election, and the board of trustees chosen at such election, under the act of 1852, had no power to do any act or adopt any ordinance, until the inspectors had substantially complied with the requirement of the statute.[1] The statute of 1875, however, provides that the failure of any inspector to file such statement within the time required by law, shall not invalidate the acts of any officer chosen at such election.[2] The clerk of the circuit court must make a record of such certified statement.

Vacancy in office, how filled.—If a vacancy occur in any town office, it may be filled by the board of trustees at a special meeting, to be called for that purpose; and, if the vacancy to be filled has occurred in the office of trustee, the appointment must be made from the district in which such vacancy occurred, and no appointment can extend beyond the annual election.

How board shall organize.—The board of trustees must elect one of their own number president of the board, who, as well as the other trustees and the officers elect, shall, within five days after the election, take and subscribe an oath or affirmation for the faithful performance of the duties of their respective offices.

Town shall be a body corporate.[3]—The president and trustees of the town, and their successors in office, will constitute a body politic and corporate, by the name of the town of , and will be capable, in law, to prosecute and defend suits to which the town is a party.

Special meetings of voters.—The clerk of the town, by order of the board of trustees, may call special meetings of the qualified voters of the town, by giving ten days' notice thereof in a newspaper, if any be printed in the town, otherwise, by posting up such notice in five public places

[1] 45 Ind. 250; 37 Ind. 66. [2] Acts 1875, Special Session, 74.
[3] 38 Ind. 41.

in the town. The notice must state the object for which the meeting is called.

Powers of board of trustees.[1]—The board of trustees of towns have the following powers:

First. To have a common seal, and to alter the same at pleasure.

Second. To purchase, hold, and convey any estate, real or personal, for the use of the corporation, so far as such purchase may be necessary to carry out the objects contemplated by the act providing for the incorporation of towns.

Third. To organize fire companies, hook and ladder companies; to regulate their government and the times and manner of their exercise; to provide all necessary apparatus for the extinguishment of fires; to make owners of buildings provide ladders and fire-buckets, which are declared by statute to be appurtenances to the real estate and exempt from execution, seizure, or sale, and if the owner shall refuse to procure suitable ladders and fire-buckets, after reasonable notice, the trustees may procure and deliver the same to him, and, in default of payment therefor, may recover of the owner the value of such ladder or fire-buckets, by suit before any justice of the peace in the proper township, and costs accrued thereby; to regulate the storage of gunpowder and other dangerous material; to direct the construction of a place of safe deposit of ashes; and may, under any order by them entered upon the proper book of the board, visit or appoint one or more fire-wardens to visit and examine, at all reasonable hours, dwelling-houses, lots, yards, inclosures, and buildings of every description, to discover if any of them are in a dangerous condition, and provide proper remedies for such danger; to regulate the manner of putting up stove-pipes; to prevent out-fires and the use of fire-works, and the discharge of fire-arms within the limits of the corporation or such parts thereof as they may think proper; to compel the inhabitants of such

[1]Acts 1877, Regular Session, 144.

town to aid in the extinguishment of fires and prevent its communication to other buildings, under such penalties as are provided by law; to construct and preserve reservoirs, wells, pumps, and other waterworks, and to regulate the use thereof, and generally to establish other measures of prudence for the prevention or extinguishment of fires as they shall deem proper.

Fourth. To declare what shall constitute a nuisance, and to prevent, abate, and remove the same, and take such other measures for the preservation of the public health as they shall deem necessary.

Fifth. To restrain from running at large cattle, sheep, swine, or other animals.

Sixth. To restrain and prohibit gambling and other disorderly conduct; to suppress and prohibit the keeping of houses of ill-fame, and to authorize the seizure and destruction of gambling apparatus; to punish intoxication, common prostitutes and their associates, immoderate driving and riding; to regulate or prohibit the use of fire-arms, fire-works, or other things tending to endanger persons and property; to prevent interference with the free use of the streets and alleys of the town, and to preserve peace and good order and prevent vice and immorality.

Seventh. To license, regulate, or restrain auction establishments, street auctions, and all tables, alleys, machines, devices, and places for sports or games, kept for hire or pay, traveling peddlers, public exhibitions, and the sale of spirituous, vinous, malt, and other intoxicating liquors within the corporation. If such license is granted to sell spirituous, vinous, malt, and other intoxicating liquors, a sum, not exceeding the amount required by the statutes of the state for license to sell or retail intoxicating liquors, may be required to be paid into the treasury of the corporation by the person so licensed, before receiving such license.

Eighth. To establish and regulate markets, and build

market houses, and direct the location of slaughter houses.

Ninth. To lay out, open, grade, and otherwise improve the streets, alleys, sewers, sidewalks and crossings, and keep them in repair, and to vacate the same.

Tenth. To appoint street commissioners and fire wardens, not exceeding three.

Eleventh. To prohibit the incumbrance of the sidewalks of the town and riding or driving thereon, except to cross the same.

Twelfth. To insure the public property of the town.

Thirteenth. To purchase, lay out, and regulate cemeteries.

Fourteenth. To plant trees upon public grounds and along the streets of such town, and provide for their culture and preservation, and to inclose any public square or other public grounds within the corporation.

Fifteenth. To levy and collect annual taxes, not exceeding fifty cents on the hundred dollars' valuation, and twenty-five cents poll tax on all property subject by law to taxation, and on each male dog a tax not exceeding one dollar, and on each female dog a tax of two dollars, to be paid by the owner thereof.

Sixteenth. To make and establish such by-laws, ordinances, and regulations, not repugnant to the laws of the state, as may be necessary to carry into effect the provisions of this act, and to repeal, alter, or amend the same as they shall seem to require; but every by-law, ordinance, or regulation, unless in a case of emergency, shall be published in a newspaper in such town, if one be printed therein, or posted in five public places, at least ten days before it shall take effect.

Seventeenth. To complete school houses in progress of erection, and to provide for the payment of the cost of the same; to erect or provide such school houses as may be necessary for the use of the schools of the town, to keep them in repair, and to provide fuel and other necessaries therefor.

Eighteenth. To construct all necessary wharves and landings for steamboats and other vessels, where the town is situated on the bank of any navigable stream or watercourse.

Nineteenth. The board of trustees shall have power to levy and collect annual taxes, not exceeding thirty cents on the hundred dollars' valuation, on all property subject by law to taxation, for the support of town schools within the corporation.

Board may provide for assessment of fines.—The board of trustees also has power to provide for fines, penalties, and forfeitures for violation of any of the provisions of the act for the incorporation of towns, and for the violation of any by-law or ordinance by them established, not exceeding ten dollars for any one offense, which may be recovered in a civil action in the name of the corporation. If, however, the offense consists in the violation of any ordinance requiring a license, the fine to be assessed must not be less than the amount required to be paid for such license, although it may exceed ten dollars.

How money must be appropriated.—All money received belonging to towns, however derived, can only be appropriated for the objects and for defraying the expenses contemplated by the statute providing for the incorporation of towns, and which accrue or necessarily arise in the exercise of the powers granted by the act for the incorporation of towns. No appropriation of money can be made without an order to that effect entered upon a proper book to be kept for that purpose by the board of trustees.

Claims against town.—No claim against a town can be audited or allowed by the board of trustees unless it be made out fully and itemized. Accounts against towns, when audited, must be numbered from one upward in the order they were presented, and a memorandum of the order must be entered upon a book to be kept exclusively for that purpose, and no claim or account can be lawfully paid, un-

less audited and allowed by the board, and no money can be drawn from the treasury except upon a warrant from the treasurer, signed by the president of the board and attested by the clerk.

When town trustees may issue bonds to pay for school houses.—When a town, by the action of the school trustees, has purchased any ground and building or buildings, or has commenced the erection of any school buildings, or has created a debt for such purpose, and the school trustees have not sufficient funds to pay for or to complete such building, or to pay the debt, the trustees of the town may issue bonds to any amount not exceeding fifty thousand dollars in the aggregate, in denominations of not less than one hundred dollars, and not more than one thousand dollars.

Before the bonds can be issued, the school trustees must file with the trusetes of the town a report, under oath, showing the estimated or actual cost of the ground or building, or of both, or the amount required to complete the buildings, or to pay the debt, as the case may be.[1]

The report may be, in substance, as follows :

Form of Report to Town Trustees of Cost of Ground and Building.

To the Board of Trustees of the Town of Moore's Hill, in the County of Dearborn, State of Indiana.

The undersigned, school trustees of the town of Moore's Hill, respectfully report to your honorable board, that said town has, by the action of the undersigned, as such school trustees, purchased lot No. 28, as marked on the original plat of said town, for the purpose of erecting thereon a building for school purposes, and has commenced the erection thereon of a building for the use of the common schools of said town, and that a debt has been thereby

[1] 1 R. S. 1876, 343; 10 Ind. 70; 15 Ind. 425; 44 Ind. 83.

contracted, which they, as such school trustees have not sufficient means to pay.

They further report, that—

The cost of the ground so purchased is	$ 500 00
The cost of the building is.....	10,000 00
Total cost.....	$10,500 00

We therefore ask that your board will provide for the issue of the bonds of said town, to an amount necessary to raise funds sufficient to pay for said ground and for the completion of said school building.

JOEL C. PENNINGTON,
GEORGE SCHABEL,
JOHN H. NOBLE,
School Trustees, etc.

Subscribed and sworn to, etc.

The above form of report may be varied to conform to the facts in each particular case. If the cost of the building has not been definitely ascertained, it may be estimated, as accurately as possible, and will be so stated in the report.

Town trustees must pass ordinance.—If the report be sufficient, the town trustees must, at once, pass an ordinance providing for the issue of the bonds. They may be made payable at any place that may be designated in the bonds, the principal in not less than one year, nor more than twenty years, after the date of the bonds, and the interest annually or semi-annually, which must also be designated in the bond; and the board of trustees may, from time to time, sell as many of the bonds as may be necessary to raise the means required; but the bonds must be sold for the best price that can be had, for cash, and for not less than ninety-four cents on the dollar.

Proceeds of bonds, how disposed of.—The proceeds of the

sales of the bonds must be paid to the school trustees, to be applied by them in the payment of the debt, or for the erection or completion of the school building; but, before they will be entitled to receive the same, they must file, with the county auditor, a bond payable to the State of Indiana, in a sum not less than the full amount of the money to be paid to them, with surety, to be approved by the auditor, conditioned for the faithful and honest application of the money to the purpose for which it was provided, and the trustees and their sureties will be liable upon the bond, for any loss, waste, or misapplication of such money, as in case of the waste or loss of school revenue.

Trustees must levy tax to pay interest.[1]—The board of trustees must, at the same time and in the same manner that the tax is levied for general purposes, levy a special additional tax sufficient to pay the interest upon the bonds, and the principal falling due, not exceeding, in any one year, fifty cents on one hundred dollars of taxable property, and one dollar on each poll, which tax must be assessed and collected, and the treasurer of the town must keep an accurate account of the revenue arising from such special tax, and must, in his reports, when required by the town authorities, show the amount thereof received, the amount disbursed, and the amount, if any, remaining delinquent. He can only pay out the money by authority of the board of trustees of the town, and he must not permit the same to be applied to any other purpose than the payment of the principal and interest of the bonds, and he will be liable, upon his bond, for any misapplication of the money. Persons residing outside of the town issuing such bonds, who send their children to the schools taught in the building paid for by such tax, or who have been transferred to the town for school purposes, will, with their property owned by them in the township in which the town is lo-

[1] 44 Ind. 83; 14 Ind. 306; 15 Ind. 357.

cated, be liable to the tax to pay the bonds, the same as if they resided in the town. The school trustees of the town may, however, if they see proper to do so, admit pupils to such schools from outside the limits of the town, upon payment of tuition therefor, without subjecting the property of their parents to such tax, provided the schools are not crowded, and the admission of such pupils will not interfere with the progress of the children residing within the town.

Surplus special school revenue may be paid on indebtedness.—By the act of March 3, 1877, school trustees of towns are authorized to pay over to the board of trustees of the town any surplus special school revenue in the hands of such school trustees, not necessary to meet current expenses, to be applied to the payment of the principal or interest of any indebtedness incurred in the purchase or erection of school buildings.[1]

When town may borrow money for other purposes.[2]—No incorporated town has power to borrow money or incur any debt or liability for any other purpose than to provide school houses and to pay debts contracted therefor, unless the citizen owners of five-eighths of the taxable property of the town, as evidenced by the assessment roll of the preceding year, shall petition the board of trustees to contract such debt or loan, and the petition must have attached an affidavit verifying the genuineness of the signatures. The petition may be as follows:

To the Board of Trustees of the Town of Allensville, County of Switzerland, State of Indiana.

The undersigned, citizen owners of five-eighths of the taxable property of the town of Allensville, in said county, as evidenced by the assessment roll of said town for the year [*insert the year preceding the date of the petition*], respectfully petition your honorable board to borrow, upon

[1]Acts 1877, Regular Session, 18. [2]44 Ind. 83; 45 Ind. 250.

the credit of said town, the sum of five thousand dollars, for the purpose of [*here state the object for which the loan is asked*], or to purchase upon the credit of said town, at a sum not exceeding five thousand dollars [*here state the property or thing to be purchased*].

AFFIDAVIT.

State of Indiana, Switzerland County.

A—— B——, being duly sworn, on oath states that the signatures of the petitioners attached to the annexed petition are genuine.

A—— B——.

Subscribed and sworn to etc.

Duty of trustees if petition is sufficient.—The board of trustees, if satisfied that the petition has the requisite number of signatures of persons entitled to sign the same, may grant the prayer thereof; and to pay any debt the trustees may thereby create, they are required to add to the tax duplicate of each year successively a levy sufficient to pay the annual interest upon such debt or loan, with an addition of not less than five cents on each one hundred dollars of taxable property, to create a sinking fund for the liquidation of the principal thereof.

Bonds of town officers.—The clerk, assessor, treasurer, and marshal, within ten days after their election, must each give bonds, payable to the State of Indiana, with freehold sureties, in such amount as the board of trustees may direct; but the bond of the treasurer and marshal shall each be in double the amount of the estimated tax duplicate for the current year.

Books, papers, etc.—All books, vouchers, moneys, or other property belonging to the corporation, and in charge or possession of any officer of the same, whose term of office has expired, must be delivered to his successor when qualified.

When the amount of tax must be determined.—The board of trustees must, before the third Tuesday in May of each year, after the town shall have been incorporated, determine the amount of general tax for the current year; but the tax for the year in which the town is incorporated may be determined at any time by the board of trustees.

Assessment of property.—The assessor must assess all property liable for taxation in the town, under such rules and regulations as the board may prescribe, and shall make return of his assessment roll to such board, on or before the second Tuesday in May of each year, or at such other time as the board of trustees may direct.

Notice of assessor's return.—The trustees shall cause the clerk of the corporation to put up notices in three or more public places in the town, stating that the assessment roll is returned and is open for inspection, and that, on a day and at a place specified in the notice, the trustees will hear and decide all complaints of, and appeals from, the acts of the assessor.

Levy of tax.—When the assessment roll shall have been corrected and completed, the trustees must levy a tax upon the taxable property of the town, to such an amount as they may deem necessary, and shall set opposite the name of each person taxed, a description and valuation of the property charged therewith, and the amount of tax assessed against such person; and, when such tax list shall have been made, they shall cause a copy thereof, with a warrant annexed, to be delivered to the marshal of such town. The original assessment roll and tax list shall be deposited with the treasurer of such town, who is charged with the safe custody of the same.

Warrant for collection.—Such warrant must be under the seal of the corporation, signed by the president and trustees, or a majority of them, and attested by the clerk, and commanding the marshal to collect the taxes specified in his duplicate within ninety days, and pay over the same, and

make return of the warrant to the treasurer of the town. Such trustees may renew the warrant for any period not exceeding thirty days.

Powers of marshal in collecting taxes.—The marshal shall collect the taxes on the duplicate when so required, and shall have the same power to enforce collections, and shall be governed by the same rules and regulations as county treasurers and county auditors, and shall have authority, in like manner, to collect by distress and sale, and to make conveyances and certificates of real estate sold by virtue of such sale, which sale, if at a county-seat, shall be at the door of the court house, or place of holding courts; and, if not at the county-seat, it shall be held at the door of the town-hall, or place of meeting of the board of trustees, and the clerk of the board shall perform the like duties, at such sale, as are required of the county auditor at a sale for state and county taxes, and all deeds or conveyances for lands so sold for taxes shall be *prima facie* evidence of the validity of such purchase.

Real estate sold for taxes may be redeemed.—Any real estate sold for taxes will be redeemable under the same regulations and restrictions as real estate sold for county and state taxes is made redeemable. All moneys for the redemption of such real estate shall be paid to the treasurer of the corporation.

Real estate sold for the payment of state and county taxes, may, under the provisions of an act approved March 3, 1877, be redeemed at any time within two years after the sale, by any person having an interest in the lands, making payment of the taxes and penalty as follows:

If redeemed within six months, the amount named in the certificate, and fifteen per centum in addition thereon, must be paid to the treasurer of the county; if redeemed after six months, and within one year, the amount named in the certificate and twenty-five per centum thereon must be paid; and if after one year, and within two

years, forty per centum must be added to the amount of the certificate; and whenever such redemption is made, all taxes that have been paid on the real estate after the sale must be repaid, with six per cent. per annum interest thereon from the date of such payment.

The lands of persons of unsound mind, infants, and married women sold for taxes, may be redeemed by them at any time within two years after the removal of the disability.[1]

Duplicate may be delivered to county auditor.—The trustees of the town may, at their option, deliver the tax duplicate to the auditor of the proper county on or before the first day of August in each year, instead of the marshal of such town, and the auditor shall enter such tax; and, if delinquent, the interest and penalty thereon, upon his duplicate. And in case the trustees elect to do so, the treasurer of such county must collect the corporation taxes upon such duplicate as other taxes are collected, and pay the same over to the treasurer of such corporation. The auditor and treasurer shall be allowed and paid by the corporation the same compensation paid by the county for like services.

Town treasurer's duties.—The treasurer of every incorporated town shall so keep his accounts as to show when and from what sources all moneys paid him have been derived, and to whom and when such moneys or any part thereof have been paid. The treasurer shall grant all licenses authorized by law, upon the presentation of the receipt of the marshal that the money therefor has been paid to such marshal. His books, accounts, and vouchers shall at all times be subject to examinations of the board of trustees, and it is made their duty to examine the same at a regular meeting of such board, on some day between the first and last Monday of April in each year, and have settlement with the treasurer.

[1] Acts 1877, Regular Session, 143.

Receipts and expenditures to be published.—It shall be the duty of the board of trustees, immediately after the annual settlement with the treasurer of the corporation, to publish in a newspaper, if one be printed therein, or if there be no newspaper, then by posting in three or more public places, an exhibit of the receipts and expenditures, specifying the sources of such receipts, what appropriations were made, for what objects, and the specific amount of each.

Duty of clerk.—The clerk of the town shall have the custody of the records, books, and papers of the board of trustees, and shall attend all meetings and record proceedings of the board, and shall perform all other duties appertaining to his office and required of him by the by-laws.

Marshal's powers and duties.—The marshal shall possess the powers and be subject to the liabilities possessed and conferred by law upon constables, in executing the orders of the trustees or enforcing the by-laws and ordinances of the town.

Streets and side-walks.—The board of trustees shall superintend the grading, paving, and improving of streets and the building and repairing of side-walks.

Duties of fire-wardens.—The fire-wardens shall attend all fires and give their personal superintendence to extinguish the same, and do all other acts required by the by-laws, and obey all orders given by the board of trustees in relation to the fire department. The town trustees are, by virtue of their office, fire-wardens.

Board of trustees may fix fees of other officers.—The trustees, clerk, assessor, treasurer, and marshal shall respectively receive for their services such compensation as the board of trustees, in their by-laws, may see proper to allow them. The board of trustees must cause to be paid all other officers of the town, for their services, a just and reasonable compensation. The language of the statute implies that the trustees have absolute power to fix the compensa-

tion of the clerk, assessor, treasurer, and marshal at whatever sum they choose, without regard to whether it may be adequate; but as to all other officers, it seems to be obligatory upon them to fix a just and reasonable compensation.

Improvement of streets, etc.—Whenever two-thirds of all the resident owners, in number or in value of real estate, bounding both sides of any street, not less than one square, shall petition to have such street or alleys connected therewith graded, paved, or otherwise improved, or the side-walks thereof built or repaired; or when two-thirds of the owners of real estate, in number or in value, on one side of such street, shall desire a side-walk on that side, it shall be the duty of such board to levy and cause to be collected by tax upon all the owners of all real estate or lots upon such street or part of a street, according to the last appraised valuation of said real estate, exclusive of any improvement that may be made thereon, such sum of money as is necessary for the improvement of such street or side walk, as in the petition requested. At the time of making such levy, the board must fix the nature, extent, and specifications of the proposed improvements; and any person upon whose real estate any such tax is levied may satisfy the same, or any part thereof, by labor done and materials furnished for the proposed improvement, under the direction, and to the acceptance of the board. If any person against whose real estate a tax shall be levied, for the purpose of building or repairing a side-walk, shall have previously built a side-walk adjoining to the whole of the real estate so taxed to the acceptance of the board, or shall afterward build or repair the same within the time prescribed by the board, and to their acceptance, it will be a full discharge of such tax for the improvement of side-walks

Inhabitants of towns subject to road tax.—The inhabitants of towns are not, however, exempted from the payment of highway tax, legally assessed, by reason of any improve-

ments made upon the streets under the direction of the town authorities, and the territory of the town may be formed into road districts.[1]

But supervisors, in working such districts, must do so under the direction and according to the plan of the board of trustees of the town.

Proceedings to include out-lots.—When two-thirds of the owners of a tier of out-lots, adjoining an incorporated town, shall sign a petition asking that the corporate limits of said town be extended so as to include said out-lots, the board of trustees of the town shall cause the petition to be recorded, and make an order that such tier of out-lots shall thereafter be included in, and constitute a part of, the corporation.

FORM OF PETITION TO INCLUDE OUT-LOTS.

To the Honorable Board of Trustees of the town of :

The undersigned petitioners respectfully represent to your board, that they constitute two-thirds, in number, of the owners of a tier of out-lots numbered from one to one hundred, and adjoining said town, on the east side thereof, as follows: [*Here describe the location of the tier of lots.*]

And they ask that the corporate limits of said town be so extended as to include said tier of lots.

[*Petitioners' names.*]

Upon the filing of the petition the board of trustees, if satisfied that it has the requisite number of signatures, may make an order to include the lots within the limits of the town as follows:

In the matter of the petition of , and others, to include a certain tier of out-lots within the corporate limits of the town of .

Now come , and others, and present to the board of trustees their petition asking for the corporate limits of

[1] 41 Ind 580..

the town to be so extended as to include a certain tier of out-lots, which petition reads as follows: [*Here copy in full.*]

And, it appearing to the board that said petition is signed by at least two-thirds of the owners of said tier of out-lots, it is, therefore, ordered that the corporate limits of the town of be, and they hereby are, extended so as to include, within the corporate limits of said town, all of said out-lots as described in said petition, and shall be henceforth included within, and constitute a part of, the incorporated town of

Trustees may annex lots that have been platted.—Whenever there shall be lots laid off and platted adjoining to, or within the town, and a record of the same is made in the recorder's office of the proper county, the board of trustees may, by a resolution, extend the boundary of the town, so as to include such lots, whether improved or not, and the lots so annexed will thereafter form a part of the town, and be within the jurisdiction of the same. A copy of such resolution, with plat or map of survey, defining the metes and boundaries of such addition, must be immediately filed and recorded in the office of the recorder aforesaid. The tier of out-lots and the lots annexed, as last specified, shall be included in, and constitute a part of such corporation, and the inhabitants residing thereon, and owners thereof, will be subject to all the laws and regulations, and entitled to all the privileges, of the corporation.[1]

The statute does not contemplate the filing of a petition in case the lots are laid off and platted, and a record of such plat made in the recorder's office of the county. The resolution of the board may be similar in form to the order made upon a petition for the annexation of a tier of out-lots, and such form may be varied to conform to the facts.

How territory may be annexed not platted or recorded.—When any town shall desire to annex contiguous territory

[1] 23 Ind. 525.

thereto, not platted or recorded, the trustees shall present to the board of county commissioners a petition setting forth the reasons for such annexation, and shall accompany the same with a map or plat accurately describing by metes and bounds the territory proposed to be attached. Such trustees shall give thirty days' notice, by publication in a newspaper printed in such town, if any; otherwise, in the county; or if none, then by posting up such notice in five or more public places within the corporation; a copy of such notice shall be served on the owner or owners of such territory, if known, and are residents of the county. The supreme court has held that the reasons stated in the following form are sufficient to justify the county board in making an order annexing the territory.[1]

FORM OF PETITION BY TOWN TRUSTEES TO THE COUNTY BOARD TO ANNEX TERRITORY.

To the Honorable Board of Commissioners of the County of Montgomery, State of Indiana.

The undersigned petitioners constituting the board of trustees of the town of Crawfordsville, respectfully represent to your honorable board that they desire that certain territory contiguous to said town be annexed thereto. Your petitioners show that said territory has not been platted or recorded, and that the same is fully and accurately described, by metes and bounds, in a map or plat which is hereto attached and made part of this petition as exhibit (A), and which is duly verified by affidavit.

Your petitioners show that the said town desires the annexation of said territory thereto, for the following reasons:

1. The limits of the said town, as they now exist, are such as to give great inconvenience to the citizens and officers of the town, and also to make the burden of taxation very unequal.

[1] 20 Ind. 272.

2. The present boundaries of the town, including the platted lots, divide the town into separate divisions, leaving property between the divisions thus formed, and in thickly populated parts of the town entirely without said boundaries, causing some of the streets to lie partly within and partly without said town.

3. There are at this time about sixty corners to the boundary of the town, whereas, should the boundaries now prayed for be established, the limits of the corporation would then be a rectangular parallelogram, and this parallelogram would be formed by including the extremes of the present corporation on the east and west, and on the north and south, making it more convenient for the citizens, and far easier for the officers of the corporation to perform their respective duties.

4. Many persons outside of the present corporation, and within the boundaries prayed for, have attached themselves thereto for school purposes, and it is but justice that they should assist, by means of their taxes, in supporting said schools.

5. The corporation is in need of the increased revenue which would result from the taxes levied upon the territory sought to be annexed, for the following reasons, viz. :

1. To provide more suitable and adequate means for the prevention of fires. 2. For the erection and keeping in repair a suitable house for the convenience and advantage of the citizens of the town, and also of the venders of market produce. 3. For the purpose of purchasing, laying out, and regulating a suitable and convenient town cemetery.

Your petitioners further show that the several tracts, lots, and parcels of ground included within said territory, belongs to [*here set out the names of the owners of the territory*], and who each own the several pieces, parcels, and lots upon which their names are written upon the said map or plat. Wherefore your petitioners pray that said territory

may be annexed to said town, according to the statute in such case provided.

A—— B——,
C—— D——,
E—— F——,
Trustees.

Proceedings before commissioners.—The board of county commissioners, upon the reception of such petition, shall consider the same, and shall hear testimony offered for or against said annexation; and if, after inspection of the map, and the testimony being heard, such board is of the opinion that the prayer of such petition should be granted, it shall cause an entry to be made on the order-book, specifying the territory annexed, with the boundaries thereof, according to the survey, which entry, or an attested copy thereof, shall be conclusive evidence in all courts of such annexation.

The reasons which will justify the annexation of territory to an incorporated town are not defined by statute. It is certainly not necessary that all the grounds set forth in the foregoing form should exist.

The county bound should exercise a sound discretion in each particular case. If the petition plainly shows that the annexation sought is necessary for the convenience and accommodation of the people and the growth and business of the town, and to equalize the burdens and benefits of the people interested, and the commissioners are satisfied of the truth of the petition, the prayer thereof should be granted.

Notice of petition.—The notice should be given as required by the statute in all cases. The names of the owners of the tracts of land should be fully and correctly stated. It has been held, however, that if the land of a deceased person is correctly described in the petition, the notice will be good, although the land is designated as belonging to the heirs of such deceased persons, without giving their names.[1]

The notice given by the trustees should describe the terri-

[1] 20 Ind. 272; 18 Ind. 203.

tory proposed to be annexed, and besides giving the name of the owners of the lands included within the limits of the proposed addition, should state at what session of the board of county commissioners and the day of the session on which the petition will be presented. The statute does not fix the number of insertions which shall be made in a newspaper if notice is given by publication, nor is it specified whether the notice must be given thirty days before the day on which the petition is to be presented, or before the first day of the session of the county board at which the application is to be made. If the first insertion of the notice be made thirty days before the first day of the term at which the petition is to be presented, and one publication thereof each week thereafter until the meeting of the board, it would seem to be a sufficient compliance with the statute.

No appeal lies from the action of the board, and its decision will be final.[1]

Jurisdiction of trustees.—The trustees have jurisdiction over any commons or public grounds belonging to the town, and have power to regulate, with the consent of a majority of the owners thereof, the banks, shores, and wharves of that portion of any navigable stream within its corporate limits; but no ferries heretofore, or which may hereafter be established by law, can be prejudiced or in any manner affected by reason of such jurisdiction of the trustees.

How corporation may be dissolved.—When an application, signed by one-third of the legal voters of any incorporated town, shall be presented to the board of trustees, in writing, asking for a dissolution of the corporation, setting forth the reasons therefor, it will be competent for the board, if they deem the reasons good, to call a meeting of the voters of the town, by giving ten days' notice thereof, to determine whether such corporation shall be dissolved.

[1] 35 Ind. 51, 177. See also 5 Ind. 547.

FORM OF PETITION TO DISSOLVE CORPORATION.

To the Honorable Board of Trustees of the Town of Center Square.

The undersigned, citizens of the incorporated town of Center Square, being one-third of the whole number of the legal voters of said town, do hereby petition your honorable board for a dissolution of the corporation of said town, for the following reasons:

First. The population of said town has become so small that the maintenance of a town organization is burdensome and unnecessary, and without any benefit to the inhabitants of the town greatly increases their taxes.

Second. Because, on account of the reduced population of the town, there is no longer any necessity for the officers required to maintain a town organization, there being no longer any official duties for them to perform which can not be as well discharged by the officers of the township, and at less cost and expense to the inhabitants of the town.

Third. There is no necessity for the continuance of said corporation, because the said town is not growing in population, nor is its business increasing, but the contrary.

Fourth. Because said corporation has only had a nominal existence for five years last past; and your petitioners believe that a majority of the inhabitants desire that the corporation be dissolved. Wherefore they pray that your board will proceed to call a meeting of the voters of the town, to determine whether said corporation shall be dissolved.

[*Petitioners' names.*]

If the board of trustees deem the reasons stated in the petition good, they may at once give ten days' notice, that on a day named, and at a place or places specified, a poll will be opened to determine whether the corporation shall be dissolved. The notice may be given by publication in

a newspaper, if one be published in the town, and also by posting up a written or printed copy of such notice in at least ten of the most public places in the town.

The board of trustees shall preside at such meeting, and a poll shall be opened, as at other corporation elections, and the voters shall vote by ballot, "yes" or "no." If a majority of all the votes given shall have thereon the word "yes," and such votes shall have been given by two-fifths of all the legal voters in such town, a statement of the vote, signed by the president, and attested by the clerk, shall be filed in the clerk's office of the county, and such town shall, at the expiration of six months from the time of holding such meeting, cease to be a corporation, and the property belonging to such corporation, after the payment of its debts and liabilities, shall be disposed of in such manner as a majority of the voters of such town, at any special meeting thereof, may direct.

No such dissolution shall affect the rights of any person in any contract or agreement to which such corporation is a party.

In a proper case, the court will interpose and dissolve a town corporation, but it has been held that the statutory mode for the dissolution of the corporation must be followed where it may be done.[1] If, however, the members of the board of trustees should resign, remove, or die, and their successors should not be elected, so that there would be no proper authority to whom a petition for dissolution could be presented, a case would arise where the courts could properly act.

Regularity of organization presumed, when.—If any incorporated town shall institute any suit in its corporate name, it shall not be required to show its compliance with the provisions of the statute as to its organization, or publication of by-laws, or ordinances, unless the same is denied by affidavit.

[1] 26 Ind. 308.

Old towns may incorporate under present law.—Any town incorporated previously to the enactment of the statute providing for the incorporation of towns now in force, may, by a resolution of the board of trustees or other municipal board thereof entered upon the record book of the corporation, become incorporated under the present law. The acceptance of the provisions of the general law will be deemed a surrender of all rights and franchises acquired under any former act of incorporation, or under any acts amendatory thereto.

This step may be taken by the board of trustees whenever deemed proper, without any petition therefor, or without submitting the question to a vote of the citizens of the town.

All the statute requires in such case is that the board shall adopt a resolution surrendering the original charter, and accepting the provisions of the present law, and that a copy of the resolution be filed with the clerk of the circuit court of the county in which the town is situated.

The resolution of the board may be in substance as follows:

Form of Resolution of Board of Trustees accepting the Provisions of the General Law.

Whereas, the town of Vevay was incorporated as such town, by a special act of the General Assembly of the State of Indiana, approved January 21, 1846, and accepted the provisions of said act, and has ever since enjoyed the rights and franchises granted by said act;

And whereas, the interests of the inhabitants of the town require that it be incorporated under the provisions of an act of the General Assembly of the State of Indiana, approved June 11, 1852, entitled an act for the incorporation of towns, defining their powers, providing for the election of the officers thereof, and declaring their duties, and the acts amendatory thereto;

Therefore, resolved, by the board of trustees of said town, that the provisions of the last-recited act be and they hereby

are accepted in the place of the provisions of said special act, and that said town be and the same is hereby declared to be an incorporated town under the provisions of the said act of June 11, 1852, and the acts amendatory thereto, by the name and style of "the town of Vevay," and a duly certified copy of this resolution is ordered to be filed with the clerk of the Switzerland circuit court, to be by him entered upon the proper record in his office.

Upon the acceptance of the provisions of the general law, the trustees, and all other officers, by whatever name designated, will continue to discharge their several duties, but by the name of the office as designated by the law now in force, until superseded by the general election.

No liability of town to be affected.—No liability of such town will be in any way impaired by such change of incorporation, but will be as binding upon the town as under the former charter.

Penalty for violating ordinance, how enforced.—Any person violating the provisions of any ordinance of a town, to which there may be a penalty affixed, may be prosecuted before a justice of the peace of such town, upon a warrant issued by such justice, as in cases of misdemeanors; and such person, upon conviction, shall stand committed until the judgment and costs are paid or replevied. And in default of payment or replevy of such judgment and costs, the defendant, unless a female, may be adjudged and required to pay the same by manual labor upon the streets or other public works of the town, under the control of the marshal of the town, for which labor such defendants shall be allowed, on such judgment and costs, seventy-five cents per day, and it is the duty of the marshal, or such other officer as the board of trustees of the town may direct, to work such defendant not less than six nor more than ten hours per day, according to the season of the year, and each evening to return him to the custody of the keeper of the prison in whose custody the defendant was com-

mitted, and upon full payment of the judgment and all costs, the defendant will be released.

The board of trustees of any town has power to pass by-laws to enforce such manual labor by the use of such means and force as may be deemed right and proper by the board, and the marshal also has full power to use all proper means to carry out and enforce the performance of the judgment by the defendant. The defendant may be committed to the town prison, if there be one; if not, to the county prison of the county in which the town is situated. The keeper of the prison is bound to receive the defendant, and will be entitled to fifty cents per day to be paid by the town, on presentation of an itemized account therefor, but shall only receive one commitment and one discharging fee. The defendant may, at any time, pay or replevy the the judgment and costs; and if the defendant has performed any labor, he will be entitled to a credit upon the judgment for the amount thereof, and only the balance can be required to be paid or replevied.[1]

This provision of the statute is intended as a protection against tramps and vagrants, now so generally infesting the state.

When lands in towns are exempt from taxation for town purposes.—Lands not platted as city or town property, used solely for agricultural purposes, or wholly unimproved, lying within the limits of a town or city, if the lands have not, in any way, been dedicated for corporation purposes, shall not be listed or taxed for general town or city purposes, to any greater percentage on the appraised value than lands in township outside of the corporation are taxed for township purposes; and the same rule must be observed in reference to articles of personal property used in farming such lands.[2]

When suburban lot may be excluded from boundary of town.—The board of trustees of any town may, at any

[1] Acts 1877, Special Session, 75. [2] Acts 1877, Special Session, 74.

regular meeting, upon the application of the owner of any suburban lot or tract of land, not laid out in lots, by a two-thirds vote of the board, so modify the boundaries of the town as to exclude therefrom such lot or tract of land, upon such terms as the board may prescribe. The application ought to be made in writing.

The statute only applies to land not laid out in lots.[1]

It is also applicable to cities as well as towns.[2]

Board of trustees may construct sewers.—The board of trustees of any town may construct and repair any sewer along any street or alley, or part of a street, block, or square, and such trustees are the sole judges of the necessity and utility of such sewer.[3]

Proceedings of board before constructing sewer.—When the board of trustees shall decide to construct any sewer, they must specify and determine upon their record the place of beginning and termination of such sewer, its route, course, and distance, and the depth below the grade to which it shall be sunk, the size or diameter of the same, and of what material it shall be constructed; and they must then appoint three appraisers, who must be free-holders and voters of the town, not in any way interested in the proposed sewer, whose duty it will be to examine all the in-lots, out-lots, and parts of in-lots and out-lots, in the town that would, in any manner, be benefited by the construction of the sewer, and must assess the amount of benefits to each lot, or parts of lots, that will result thereto by the construction of such sewer, and the appraisers must make out a schedule of the lots, or parts of lots, with their appraisement thereto, and shall append to such schedule their affidavit that the said assessment is, in all respects, a true and impartial assessment of the benefits resulting to each lot, and part of lot, in any way benefited by the said proposed sewer, according to the best of their judgment; and the

[1] See 5 Ind. 547.

[2] Acts 1877, Regular Session, 22.

[3] 1 R. S. 1876, 887.

appraisers shall file such schedule with the clerk of the board of trustees of such town, who shall record the same in the records of the board of trustees; and from and after the recording of the schedule the assessment therein made will be a lien on the lots and parts of lots respectively, against which they are made, to be in no manner diverted, only as hereinafter specified.

Copy of order to be issued to appraisers.—Before the appraisers proceed to discharge their duties, the board of trustees shall cause to be issued to them a certified copy of their order, giving the commencement, termination, distance, route, depth below the grade, and the material of which such sewer is to be constructed, and of their appointment.

Majority of appraisers competent to act.—The majority of the appraisers will be competent to act, and two of them concurring in the same proposition, such concurrence will be taken as the decision of the appraisers on such proposition.

Trustees to order the sewer made.—As soon as the schedule of assessments made by the appraisers is returned and recorded in the record of the board of trustees, such board shall proceed and cause the sewer to be constructed in accordance with their previous plans and specifications, as near as can be done, making such alterations from the original plan only as the necessity of the case or the better construction of the work may seem to require.

Cost to be divided among owners of lots.—As soon as the board of trustees ascertain the cost of the construction of the sewer, they shall make a division of the cost of the sewer among the owners of lots and parts of lots so assessed for the construction of such sewer; and as the whole amount of assessment made for the construction of the sewer, is to the whole cost of construction of such sewer, so shall the lots and parts of lots owned by each individual be to the amount each individual shall pay upon each lot

or parts of lots owned by him, for the construction of the sewer; and the said board of trustees shall cause a list of the owners' names of said lots or parts of lots, with the description of the lots attached thereto, and append the amount in dollars and cents, so found as being the share properly chargeable against each lot and parts of lots owned by any one person, to be made out by the clerk of said board of trustees, and cause such list to be recorded in the records of the board of trustees of such town.

Cost of sewer, how collected.—The clerk of the board of trustees of the town shall make out under his hand and the seal of the town, a certified copy of such list, showing the amount chargeable against each lot and parts of lots in the town, and deliver the same to the treasurer of the town, which will be authority for him to collect the amount as specified in the list; and the treasurer of the town has all the power and authority in the collection of the same that the marshal of such town has in the collection of taxes levied by the town, and will be governed by the same rules and regulations, so far as applicable, that county treasurers are in collecting taxes; and the owners of the lots or parts of lots shall have sixty days from the time such list is placed in the hands of the treasurer, within which they may pay the same without cost. The treasurer, as soon as he receives the list from the clerk of the town, shall cause notice to be given thereof, either by publication of the list in a weekly newspaper printed in the town, or by posting up three copies of such list in three public places within the corporate limits.

When ten per cent. penalty will be added.—At the expiration of sixty days from the time the list is placed in the hands of the treasurer, he will add thereto ten per cent. on all the amount so charged against each lot and parts of lots remaining unpaid at that date, which shall be collected as a penalty for non-payment within the sixty days, and

from that date there will be charged six per cent. interest on all remaining unpaid.

Lien on lots in favor of town.—The lien created on the lots and parts of lots, by the assessment, shall be in favor of the town in which such lots are situated, and such lien may be enforced by an action in the name of the town, in any court of competent jurisdiction; and in such action the presumption of law will be that all the provisions of the statute regulating the construction of sewers have been complied with, and the only defense that the defendant will be allowed to set up in the action will be that he has paid the amount with which the lots or parts of lots are charged, and that said lot or parts of lots are not benefited to the amount assessed against them.

What costs to be paid out of treasury.—The cost of appraisers and town officers, in the collection of said funds for building the sewer, and in making provisions for building the same, shall be paid out of the treasury of the town as other fees.

Trustees must direct work.—The sewers shall be constructed under the direction of the board of trustees, and to their satisfaction and acceptance; and they may appoint an agent to oversee the same, and also employ an engineer to lay off and make specifications and plans of the work.

Trustees may order part of costs paid out of treasury.—The board of trustees shall have power to pay a part of the construction of said sewer out of the general funds or treasury of the town, when, in their judgment, the same would be fair and equitable to do so; and when they so determine, they shall so order and specify what part of the construction of the sewer shall be paid out of the general funds of the town, before making the *pro rata* dividend upon said assessment on said lots or parts of lots to be benefited, and shall, in that case, take into consideration, in making the *pro rata* dividend, the amount to be paid out of the general fund of said town and making the

amount to be paid by the owners of the lots and parts of lots, less the amount paid out of the general funds of the town.

Time and manner of payment must be provided for.—In letting the work, the trustees shall specify and agree with the contractor, as to the time and manner of payment therefor.

Ordinances in reference to sewers.—The board of trustees of the town shall, by an ordinance, provide for the protection of the sewer and the manner and terms that any person or persons may tap, open, or intersect with said sewer; and no person will be allowed to tap, open or intersect, or in any manner interfere with the same, without first procuring a permit from the board of trustees.

Streets, alleys, and bridges.[1]—The board of trustees of incorporated towns of this state have exclusive power over the streets, alleys, highways, and bridges, within the corporate limits of the town, and may prescribe the height and manner of construction of all such bridges, and lay out, survey, and open new streets and alleys, and straighten, narrow, widen, grade, and gravel, and otherwise alter and improve those already laid out, or that may be hereafter laid out, and make repairs thereto. They may cause buildings, structures, and other things in the way of any streets or other public improvement, to be taken down, removed, and appropriated, upon the payment of damages, and no person residing in the town shall be compelled to work on any road or highway without the corporate limits of the town, and the board of trustees may exercise all the powers of township trustees, in regard to highways, in their respective towns; and the marshal, under the direction of the board of trustees, must perform all the duties, and exercise all the powers of road supervisors in reference to a road labor tax, not to exceed two days in each year by each person liable to work on highways in townships,

[1] R. S. 1876, 890.

and shall be governed by the same rules and regulations in reference to the collection and enforcement of the same; and any person so liable to work, may be discharged therefrom on the payment of one dollar and fifty cents per diem.

The board of trustees may, by general ordinance, prescribe the time within which, and the manner in which, such labor shall be performed.

Proceedings to open or widen streets or alleys.—When, upon petition signed by twelve freeholders, residents of any town, the board of trustees of such town may be of the opinion that public convenience requires the opening of a new street or alley, or widening or narrowing a street or alley already opened, the board of trustees shall appoint three commissioners, residents of the town, who shall be disinterested freeholders, to appraise and assess the damages and benefits accruing to the owner of any land or lot through which any street or alley is proposed to be constructed or altered, or any building or structure thereon appropriated, and such commissioners shall, before they proceed to perform their duties as appraisers, take and subscribe an oath or affirmation, faithfully to perform their duties as such appraisers, which shall be indorsed upon, or attached to, their appointment, and filed with the clerk of the board. Twenty days' notice shall be given to such commissioners by the board of trustees, through the town clerk, of the appraisement to be made, giving a complete description of the premises to be viewed. A like notice shall be given by personal service, or by leaving the same with some person of suitable age at their reputed place of abode, to each of the owners or agents thereof of lots or lands upon or through which the public improvements, or street, or alley, is proposed to be made. If the owners are unknown or non-residents, publication of the same in one or more newspapers of the town, or by posting up written notices in six public places in the town, if there be no news-

paper published therein, for three weeks, will be deemed equivalent to such personal service.

Duty of commissioners.—Such commissioners, or a majority of them, must, at the place and time indicated in such notice, proceed to an examination of the real estate proposed to be appropriated, and shall then and there estimate—first, the value of the land or other property to be appropriated for such improvement; second, what real estate, if any, would be benefited by the improvement, specifying the same in parcels, with the name of the owner, if known, and the proportion of benefits each named receives, and the proportion of damages each would sustain. They shall view the premises and receive any evidence touching the question before them, and may, for that purpose, administer oaths to witnesses examined in relation thereto. They shall report on each of the specifications above indicated, and, within ten days thereafter, file the same with the clerk of the board of trustees.

Damages assessed must be tendered.—When such report is filed, as in the preceding section required, the board of trustees, if it accept the terms of the same, shall direct the treasurer of the town to tender the owner or owners of such real estate, or their heirs or representatives, the damages awarded by such commissioners, deducting the amount of benefits assessed to such owner or owners; or if not found within the town, or the award is not accepted, then the sum shall be kept by the treasurer, as a special deposit, subject to the order of such owner, or his heirs or representatives.

Duty of board if appropriation is made.—If the board of trustees, within twenty days after the filing of the report, by a vote of a majority of the members, determine to make the appropriation of real estate for such improvement, it shall cause an assessment list to be made by transcribing so much of the report, as aforesaid, as describes the parcels of real estate to be benefited by the opening or improve-

ment, with the name of the owner, if known, and the amount of benefit which each would receive, thereby directing such amount to be assessed upon such parcels of real estate, respectively; which assessment shall be a lien on such real estate. The board of trustees may, immediately after making such assessment, by suit in any court of competent jurisdiction, in the name of such corporation, recover, against the owner of such parcels of real estate, the amount of such assessment; and, upon execution against the property of the defendant, upon such judgment, the same shall be sold for cash, without regard to valuation or appraisement laws of this state. The board of trustees shall, within twenty days from the filing of the report, either accept or reject the terms of the same, and any owner of land, or representative thereof, aggrieved by such report, may appeal therefrom at any time within thirty days from the filing thereof, to any court having jurisdiction of the same, upon filing the usual bond with the clerk of the town for the payment of costs. But no such appeal shall prevent any such town from proceeding with the appropriation and improvement, as if no appeal had been taken. No other question shall be determined than the regularity of the proceeding in the suit, and the amount of damages sustained.

When owner of lands is an infant.—When the owner of any such land or building appropriated, as aforesaid, shall be an infant, or of unsound mind, no proceeding shall be had affecting the rights of such persons until a guardian therefor shall be appointed by the court having probate jurisdiction, and such guardian shall have given security, to the satisfaction of such court, for the faithful performance of the trust; but any proceeding affecting such rights shall only be void to that extent.

Petition for improvement of streets.—Whenever a majority of all the resident owners of any lots or parcels of land on any street or alley, not less than one square, to be estimated

by numbers, or by measuring the front lines of such lots or parcels of land bordering thereon, shall petition the board of trustees of such town to grade, pave, gravel, or macadamize, or for either kind of said improvements, the board of trustees may cause the same to be done according to the specifications by them to be adopted, by contracts given to the best bidder, after advertising to receive proposals therefor. But the board of trustees may order the improvement of any street around the public square in the town without the filing of such petition, and when the county in which such town is situate owns or controls real estate bordering on such public square, it shall be subject to the same rules and regulations, as to payment for the improvements, as the citizens of said town are subjected.

The question whether the petition is signed by the requisite number of owners of lots may be determined in two modes—one by ascertaining the number of the petitioners simply, and the other by measuring the front lines of the lots or parcels of land bordering on the street to be improved. If the petition be signed by a majority of the resident owners of lots, or by persons owning more than one-half the number of front feet, it will be sufficient.

It has been held that where a railroad company occupied and used one side of the street of a town for right of way, and owned real estate contiguous to the same side of the street, such real estate was liable to assessment for improvement of the street.[1]

By resident owners, the statute means persons residing within the town.

How cost of improvement shall be apportioned.—The cost of any such improvement shall be estimated according to the whole length of the street or alley, or the part thereof to be improved, per running foot, and the town shall be liable for so much thereof only as is occupied by public grounds of the town bordering thereon, and the crossings

[1] 47 Ind. 25, 566; 35 Ind. 532.

of the streets and alleys; and the owners of lots or parcels of land bordering on such street or alley, or the part thereof to be improved, shall be liable for their proportion of the cost of such improvement, in the ratio of the first line of lots or parcels of land owned by them to the whole improved line. And when the owner of any lot or parcel of land shall have made any improvement in front of his lot or parcel of land, in accordance with the general plan for the improvement of such street or alley, and under the direction of the board of trustees, he shall be entitled to a reasonable allowance therefor upon his proportion of the cost of such improvement, which reasonable allowance shall be determined by the board of trustees. And every such owner of lot or parcel of land improved, shall be entitled to a credit for his road tax and road-labor tax that may accrue for the year in which the improvement is made.

Estimates of cost, when to be made.—When any such contract shall be made, and shall have been fulfilled or in progress of fulfillment, the board of trustees has power to cause estimates to be made, from time to time, of the amount of work done by contractors, and to require such amount to be paid to him, deducting a reasonable percentage to secure the completion of the contract, until the whole shall be finished, and to prescribe the time in which the whole shall be completed; and such estimate will be a lien upon the ground upon which they are assessed, in favor of the contractors. In case any of the owners of lots or parcels of land on which such assessments have been made, shall fail or refuse, for the space of ten days after the date of the estimate, to pay the amount thereof due by such person to the contractors, such contractors may immediately, by a suit in any court of competent jurisdiction, recover against such owners of lots or parcels of land, the amount of such estimate, and upon execution against the property of the defendant upon such judgment,

the same shall be sold for cash, without regard to valuation or appraisement laws of this state; and in such suits on estimates, no question of fact shall be tried which may arise prior to the making of the contract for such improvement under the order of the board of trustees.[1]

Vacation of addition.—If any person shall lay off an addition to any town which does not improve, and shall be the legal owner of all the lots contained in such addition, such person, or any other person who shall become the legal owner thereof, shall have such addition, or any part thereof, vacated, by applying to the board of commissioners of the proper county, after notice, as in case of the vacation of streets and alleys, and upon proof of ownership of such lots. It is not necessary that the consent of any one should be procured in such case, except the person owning all of the lots, and his signature alone to the petition is sufficient. The petition need only describe the addition, and show that the petitioner is the owner of all the lots, and that the addition does not improve.

Proceedings to change name of town.—Such board may change the name of any town upon a petition therefor of a majority of the qualified electors of such town, and in case any such change is made, notice thereof shall be given by publication three weeks successively in a newspaper of the county, if any, and if not, by written or printed notices posted up in three of the most public places of such town; and a certified copy of the order of such change shall be recorded in the recorder's office of the county.

The statute does not require that any reason shall be stated in the petition asking for the change of the name of a town. If a majority of the qualified voters ask that the name of such town be changed, it seems to be the duty of the county board to make the change. The name

[1] As to the averments necessary to be made in a complaint by a contractor to recover for a street improvement, see 47 Ind. 566.

adopted must be different from the name of any other town in the state.

When survey and plat of town is lost.[1]—When the original survey and plat of any incorporated town of this state have been, or may hereafter be lost or destroyed, the board of trustees of such town may order a survey and plat of the town to be made, and when such survey and plat is made and adopted by a majority of the board of trustees, the same shall be presented to the board of commissioners of the county in which such town is situated, with an affidavit that the original survey and plat is lost, whereupon the board of commissioners must order the same to be recorded by the recorder of the county, as the survey and plat of such town.

Trustees may order side-walks improved.[2]—Whenever, in the opinion of the board of trustees of any incorporated town, public convenience requires that the side-walks of any street in such town shall be graded, or paved, or planked, such board of trustees may, by an ordinance, compel the owners of lots adjoining such street, to grade and pave or plank the same; and such ordinance shall specify the height of the grade, if the grade of any such side-walk is to be altered, the width of such pavement, and the time when the same shall be done. The board of trustees may order the improvement made without any petition.

When work may be let.—If the owners of such lots fail or refuse to grade and pave or plank such side-walk, as required in such ordinance, it will be the duty of the marshal of such town forthwith to let out the grading and paving or planking of such side-walk to the lowest bidder, first giving ten days' notice by posting up written notices thereof in three public places in such town for that length of time.

How work shall be paid for.—And when such grading and paving or planking is completed, the marshal must report

[1] 1 R. S. 1876, 894. [2] 1 R. S. 1876, 895.

the same to the board of trustees, and the cost of such work must be audited and paid out of the treasury of such town, as other claims against said corporation are audited and paid.

Costs may be collected from owner of lots.—Such board of trustees may immediately, by a suit in any court of competent jurisdiction, in the name of such corporation, recover against the owner of such lot the amount of the costs of paving or planking and grading such sidewalk, and upon execution against the property of the defendant, upon such judgment, the same shall be sold for cash without regard to the valuation and appraisement laws of this state.

The statute further provides that from the date of the completion of such pavement or planking or grading under contract by the marshal, the costs of such grading and paving or planking and the damages "aforesaid," shall be a lien on such lot, and may be collected.

There being no provision in the act making the owners of lots liable for damages for failing to make the improvements, none can be recovered by the corporation, except, perhaps, the interest upon the amount the town may have paid for such improvements, from the date of payment.

Associations to build towns may be incorporated.—By an act of the legislature, approved December 22, 1858, it was provided that where any persons had before that time associated themselves together for the purpose of building a town in the state, such persons might be incorporated. The statute referred to is as follows:[1]

Notice of the intention to organize such corporation, and of the time and place of holding the first meeting, signed by one or more persons, shall be published in some newspaper of the county where such town has been located, or if none, then in some newspaper of an adjoining county, for at least twenty-one days before such meeting is held.

Proceedings at first meeting.—At such first meeting a tem-

[1] 1 R. S. 1876, 896.

porary or permanent presiding officer and secretary shall be selected, and a written statement prepared specifying the object of such association, its name, and the time and manner of giving such notice to be signed by such presiding officer and secretary.

Statement and notice to be filed and recorded.—Such statement, and a copy of such published notice, shall be filed in the office of the recorder of such county, and by him shall be recorded in the record of deeds, for which he shall be entitled to a fee of two dollars.

First meeting to consist of twenty or more persons.—It will not be necessary for a majority of the members of such association to be present at such first meeting, but any twenty or more shall be sufficient to hold the meeting and organize the corporation.

When incorporation is complete.—From the time of filing such statement as aforesaid, such association shall be deemed and held a body corporate and politic by the name selected, with full power to sue and to be sued, contract and be contracted with, have a common seal, make laws for their own government, and may exercise all such other powers as are incident to corporations, for the purpose of carrying into effect the object of their association.

May acquire and sell real estate.—Such corporation may acquire by purchase, or otherwise, real estate, and may hold and convey the same, or any part thereof, in such manner as they may see fit; but such lands will be subject to taxation as other real estate.

Must keep a record.—The corporation must keep a record of its proceedings, and such record, or copies thereof, duly attested by its clerk or secretary, may be read in evidence in all suits where the interests of such corporation are concerned.

Lands held by trustees to be conveyed to the association.—In case any persons have associated for the purpose of building a town, and have purchased real estate prior to the

passage of this act, and have taken deeds to one or more persons in trust for such association, and such association shall hereafter become incorporated under the provisions of this act, then such trustees may and shall convey to such corporation all such real estate, and shall assign to such corporation all such title bonds as may have been executed to them in trust for such association, and such conveyance and assignment shall pass as good and perfect a title to such corporation for such lands, as if such association had been incorporated at the date of the execution of such deeds, and said deeds had been executed to the corporation.

This statute is by its terms limited in its application to associations for building towns formed prior to its date.

Person laying off town must record plat.—Any person who may lay off any town, or addition thereto, in this state, shall, previous to the sale of any lots in such town, cause to be recorded in the recorder's office of the county wherein the same may lie, a correct copy of the plat of said town, with the public grounds, streets, lanes, and alleys, with their respective widths properly marked, the lots regularly numbered, and the size of the lots marked by reference to the plat.

Donations.—Every donation or grant to the public, or to any individual, religious society, corporation, or body politic, noted as such on the plat of the town wherein such donation or grant may have been made, shall be considered a general warranty to the said donee or grantee, for the purposes intended by the donor or granter.[1]

Plat must be acknowledged.—The person desiring to lay off such lots, before offering such plat for record, shall acknowledge the same before the recorder of the proper county, or some justice of the peace thereof, a certificate of which acknowledgment must, by the officer taking the

[1] 46 Ind. 263; 48 Ind. 181.

same, be annexed to such plat or other paper, and recorded therewith.

Penalty for failure to comply with the statute.—Every person who may lay off any town, or any addition to any town, in this state, and fail to comply with the requisitions of the statute, shall forfeit and pay for the use of such town, for every month, a sum not exceeding one hundred dollars, nor less than five dollars, to be recovered in the name of the treasurer of the county.

When plat is imperfect, new one to be made.—Where any town plat heretofore or hereafter to be recorded, does not clearly describe the size of the lots, streets, alleys, and courses of the lines of said town, and where donations have been given or intended to be given, either to the public or to individuals, or to any religious society, and it has been neglected to insert the same on said plat, any of the proprietors of such town are required to make out such other descriptions as will more clearly explain the true intent; which shall be acknowledged, certified, and recorded, as required by law, as in case of an original plat.

Vacation of streets, etc.—Whenever any person or corporation, interested in any incorporated town, or in any real estate in this state, laid out in streets and lots as a town, may desire to vacate any lot, street, alley, common, public square, or part thereof, in such town or plan of town, such person or corporation may petition the board of county commissioners for the proper county, giving a distinct description of the property to be vacated, and the names of the persons to be affected thereby, which petition shall be filed with the county auditor, thirty days previous to the sitting of such board, and notice of the pendency of said petition shall be given, for the same space of time, in a public newspaper printed in the county, if one be published therein, and by written notices thereof set up in three public places, near the lots, streets, alleys, common, or square proposed to be vacated. The statute does not

require that any reason for the vacation asked for shall be given. The petition will be sufficient, in point of form, if it clearly and accurately describe the streets, alleys, or property to be vacated, and the names of the persons to be affected by such vacation.

If no opposition be made to such petition, the board of county commissioners may vacate the same with such restrictions as they may deem for the public good; but, if opposition be made, such application shall be continued until the next term of the board, when, if the objector consent to such vacation, or if two-thirds of all the real estate holders of the town petition therefor, the board may grant the prayer of the petitioner. A fair construction of the statute seems to be, that in all cases, except the vacation of a street or alley be prayed for, if two-thirds of all the real estate owners of the town sign the petition, the commissioners have no discretion, but must grant the prayer thereof; but the board may, in all cases, impose such restrictions as the interest of the public may require.

The commissioners can not, however, make an order vacating a street or alley unless the consent of all the persons owning real estate immediately adjoining thereto be obtained in writing, which must be duly acknowledged before a justice of the peace, and, when so acknowledged, must be filed with the county board. As the statute designates a justice of the peace as the officer before whom the acknowledgment must be made, it would, probably, not be sufficient if acknowledged before any other officer.

In whom vacated property will vest.—The part so vacated, if it be a lot, shall vest in him who may have the title thereof, according to law; and if the same be a street or alley, the same shall be attached to the ground bordering on such street or alley, and all title thereto shall vest in the persons owning the property on each side thereof, in equal proportions, according to the length or breadth of,

such ground, as the same may border on such street or alley; and whenever a public square shall be vacated, the property thereof shall vest in the board of county commissioners, for the use of the county.

When towns may adopt a survey and plat.[1]—When any town has no sufficient survey and plat, the board of trustees may, by a resolution adopted by a vote of ayes and nays, if two-thirds of all the members of the board vote therefor, order that a survey and plat of such town shall be made by competent persons, to be chosen by the board, and when the survey and plat is made, the same may be adopted by resolution, by a vote of ayes and nays, if three-fourths of all the members of the board vote therefor, And when a certified copy of the resolution ordering such survey and adopting the same, with the vote thereon, and the names of the members voting for and against the same, signed by the president of the board of trustees and clerk, and attested by the seal of the town, shall have been recorded, together with the survey and plat in the recorder's office of the county in which the town is situated, such survey and plat shall be deemed and taken as the survey and plat adopted by such town, and the original, or the record, or a duly certified copy thereof, will be evidence in all the courts. Any town may also, by resolution passed by a three-fourths vote, in the same manner adopt any survey and plat which has already been made and which may be recorded in the same manner and with the same effect as in case of a survey and plat made by order of the board. When recorded, the original survey and plat must be deposited with the town clerk for safe keeping.

When town plats must be transferred for taxation.—All persons who may plat towns, or additions to any town, must, before the same is recorded by the recorder of deeds of the county, have such plat transferred for taxation by the county auditor, and the taxes upon the ground so

[1] 1 R. S. 1876, 346.

platted must be divided, and the proportion assessed equally against the lots, and such assessment must be furnished to the county treasurer.[1]

Towns may erect prisons.—The board of trustees of any incorporated town has power to erect a prison within the corporate limits, and it is lawful to imprison persons therein who may be convicted of any offenses against the laws of such town, or for offenses against the penal laws of the state; and persons charged with offenses punishable with imprisonment in the state prison may also be temporarily confined therein, until they can be conveniently removed to the county jail. In all cases where the county jail is convenient, it may be used by the town until a town prison can be erected.[2]

May plant and maintain shade trees.—Trustees of towns may compel the owners of lots, or parts of lots, bordering on any street, alley, public square, or common, to plant and maintain shade trees along the same, under the same regulations and in the same manner that the grading and paving of streets is enforced.

Persons presenting petitions to the board of trustees, for the planting of shade trees, may designate the kind of tree preferred, and it will be the duty of the board to order that such kind of tree shall be planted; but if no kind of tree is designated in the petition, or if the board of trustees order the planting of trees without any petition, the board will determine the particular kind of tree which must be specified in the order.

The board of trustees has full power to pass by-laws and ordinances for the protection and preservation of shade trees so planted, and may regulate the distance at which such trees shall be located, and designate the kind of boxes or other protection that shall be used, the costs of which may be assessed and collected in the same manner that the

[1] 1 R. S. 1876, 311, note 1. [2] 2 R. S. 1876, 294, note 3.

costs of planting and maintaining the trees is assessed and collected.[1]

Any person who shall remove, cut, or destroy any shade tree in any incorporated town or village, or remove, or in any way injure any box or other protection to any such tree, will be liable to a fine of not more than three dollars, upon conviction before a justice of the peace. The statute does not, however, prevent any such acts, if done for the improvement of property or streets.[2]

Garbage, slops, etc.—The board of trustees also has power to pass by-laws to secure the removal of slops, garbage, the carcasses of dead animals or other waste material from the corporate limits, and for such purpose may appoint or contract with any person to perform such service, and may provide, in the contract or appointment, that such person shall have the exclusive right to remove the same during his employment.

When portions of street may be enclosed for the culture of trees.[3]—The board of trustees may, with the consent of persons owning more than one-half of the lots along any street, counting by lineal feet of street front, authorize all persons owning or occupying such lots to enclose portions of the street in front of their lots, and to occupy the same for shade and ornamental purposes, but not for permanent structures, nor so as to reduce the street and side-walk below the width of sixty feet.

Fire limits.[4]—Whenever two-thirds of the owners of real estate, within the proposed fire limits, residing within a town, on any street or streets, or designated part of a street or streets, shall petition the board of trustees for the passage of an ordinance establishing fire limits and preventing the erection of wooden buildings on such street or streets, or parts thereof, the board, if satisfied that the petition contains the names of two-thirds of the owners of real

[1] 1 R. S. 1876, 295, note 1.
[2] 1 R. S. 1876, 880.
[3] 1 R. S. 1876, 879.
[4] 1 R. S. 1876, 879.

estate within such limits, and that such ordinance would be expedient and just, may pass the same, prohibiting the erection of any wooden building within the limits prescribed in the petition, but such fire limits must be confined, as near as practicable, to the business part of the town.

Form of Ordinance establishing Fire Limits.

In the matter of the petition of John Jones, and others, to establish fire limits.

Now comes John Jones and others and present their petition, praying for the passage of an ordinance establishing fire limits within the town, and prohibiting the erection of wooden buildings within such limits, which petition is in the words following [*here copy in full*].

And the board, upon due consideration, is satisfied that said petition contains the names of two-thirds of the owners of real estate within such proposed fire limits, and that it is just and expedient that an ordinance be adopted in accordance with the prayer of said petition. Therefore—

Be it ordained by the board of trustees of the town of , that fire limits be, and the same are hereby established within the town of , as follows, to wit: [*Here give an accurate description of the boundary, and of the streets or parts of streets included*], and that the walls of all buildings hereafter erected by any person within said limits shall be built of brick or stone, and the roofs shall be made of tin, iron, or slate; and the erection of all structures and buildings of every kind within said limits, constructed wholly of wood, is hereby prohibited and forbidden; and it is hereby declared to be unlawful for any person, in the construction of any building within the limits aforesaid, to use wood, except for floors, windows, and doors.

If deemed necessary, the ordinance may specify more

definitely the kind of material that may be used in the construction of buildings within the prescribed limits.

Riding on side-walks prohibited.[1]—Any person who shall ride or drive on the brick, stone, plank or gravel side-walk of any town or village, or upon any similar side-walk intended for foot-passengers, by the side of any public highway, except it be in the necessary act of crossing the same, will be liable to a fine of not more than three dollars, upon conviction before a justice of the peace.

No property qualification required of officer.[2]—No property qualification is necessary to render any citizen eligible to hold any office in any incorporated town.

Qualification of voters.[3]—In all town elections no other qualification of voters shall be required than such as are made necessary under the constitution of the state, except that they must vote in the ward or district where they reside.

Marshal, how chosen.—The board of trustees, at the first regular meeting after their election, must elect a town marshal, who will hold his office for one year and until his successor is elected and qualified, and the board may, at any time, remove him for good cause shown, and fill the vacancy by appointment.

Assessment of real estate in towns.—The boards of trustees of towns are authorized, by statute, to adopt the appraisement of real estate within the corporate limits made by the township assessor. It is made the duty of the county auditor to furnish to the town clerk, upon request therefor, a certified copy of such appraisement, in the manner listed, and to whom charged upon his duplicate, as the same appears thereon at the time when furnished; and the appraisement must be furnished on or before the first Monday in January following appraisement, and following every new appraisement of real estate for state and county purposes. The auditor will be allowed the same fees that he may be allowed by law at the time for making tax du-

[1] 1 R. S. 1876, 880. [2] 1 R. S. 1876, 875. [3] 1 R. S. 1876, 875.

plicates, which must be paid by the town. The clerk must copy the list upon the tax duplicate of the town, and it will be the basis for the assessment of real estate in the town. This provision of the statute also applies to cities.[1]

Shares of bank stock, when liable to be taxed by towns.[2]—The shares of capital stock owned or held by any person or corporation in any bank or banking association, organized under the laws of this state or of the United States, is liable to taxation for municipal purposes by incorporated towns in which such bank or banking association may have its banking-house or place of business, and such shares of stock must be taxed at the same rate that other taxable property in such town is assessed.

Duties of county auditor.—The auditor of every county in which there is an incorporated town in which a bank is located must, on or before the first day of May in each year, furnish to the president of the board of trustees of such town, on demand being made therefor, a duly certified copy of the sworn statement which may have been delivered to him by the president or cashier of such bank, showing the number of shares comprising the capital stock of such bank, the name and residence of each stockholder, and the number of shares owned by each, the par and cash value of each of such shares, and the par and cash value of the entire capital stock of such bank on the first day of April of the current year.

Duty of auditor if no statement is made.—If no such statement has been made, he must make and certify a true statement of all information he may have obtained concerning the facts required to be set forth in such statement.

Duty of officer with reference to copy or statement.—On receiving such copy or statement, the officer must at once file it with the clerk of the town, and from the information derived therefrom the assessor or other proper officer of the town will proceed to enter in the assessment roll and

[1] 1 R. S. 1876, 338. [2] 1 R. S. 1876, 339.

tax duplicate for the current year the names of the stockholders of such bank, the number of shares, and the value of each held or owned by each stockholder respectively, and shall assess thereon to the owner or holder thereof the proper amount of corporation taxes, at the rate that other taxable property may at the time be assessed for town purposes. If any such stockholder is assessed in such town with other property, the amount and value of such stock will be added to his assessment as personal property.

Taxes on bank stock, how paid.—Taxes on such shares of stock must be paid by the owners or holders thereof, as other taxes on personal property are paid, and all laws and ordinances of any town, and all penalties for non-payment of taxes, will apply to taxes on such bank stock. The officers of any bank may, however, pay such taxes for such stockholders, if they see proper to do so, and will have the right to charge the amount of such taxes to the stockholders, and retain the same out of any dividends that may be declared in their favor; and it is the duty of such bank officers, when notified that such taxes are due and unpaid, to retain the taxes out of any dividends due or to become due on the stock.

Taxes a lien on stock.—Such taxes become a lien on the shares of stock on the first day of May of each year for which the assessment is made, and every transfer of such stock will be subject to the lien.

How assessment shall be made.—In fixing the value of such shares of bank stock, the proper proportionate part of the value of any real estate held or owned by such bank in this state, and taxed under the laws thereof, and in which any part of such capital stock shall be invested, shall be deducted from the gross cash value of such shares, and in making the deduction the valuation of such real estate for taxation shall be the criterion.

When a town may be united with a city.[1]—When an incor-

[1] 1 R. S. 1876, 335.

porated town and a city adjoin each other, they may be united or consolidated, or the town may be annexed to the city, if a majority of the qualified voters of such town and city are in favor of such consolidation or annexation.

How election may be ordered.—The statute provides that in case it is proposed to unite a town and city, the common council of the city and the president and trustees of the town must first agree upon the terms and conditions of such consolidation or annexation, and also upon a day when an election will be held for the people of the town and city to vote upon the question.

Notice of agreement and election.—Notice of the agreement must be given at least three weeks before the time agreed upon for the election, by publication at least three times in every newspaper published in the county in which such town and city are situated, and by posting printed hand-bills also containing the agreement in three of the most public places in each ward in the town and city.

Election, when and where held.—The election must be held on the day agreed upon, and at the usual place of holding city and town elections in such city and town, and will be governed in all respects by the laws and regulations governing other city and town elections in such town and city. Those who are in favor of union or annexation, as provided in the agreement of the common council and board of trustees, w ll have on their ticket the word "union," and those opposed "no union," or other words having the same meaning.

Report of inspectors and judges, and proceedings thereon.—The inspectors and judges must report to the common council and the board of trustees the result of the election in such city and town respectively, and the result of the election in each corporation must be entered upon its record, and a duly certified copy of each must be furnished to the other corporation, and if a majority of the votes in the town as well as in the city are found to be in favor of

the union, the president and trustees of the town, and the common council of the city, shall meet at the council chamber of the city, and by resolution declare that the town is annexed to the city, or that the two corporations are united, as the case may be, according to the agreement, and the resolution must be entered upon the record of the city council, and a copy thereof recorded in the recorder's office of the county in which the city is situated, and a certified copy thereof will be evidence in all the courts. If a majority of the votes in either the city or town be against the union or consolidation, no further action can be had beyond making the proper record of the result.

Effect of annexation.—If the agreement made be to annex the town, and the election and resolution of the trustees and common council be in favor thereof, the town will cease to have any corporate existence, and will thenceforth constitute a part of the city, and the city will continue its existence under its corporate name, and will be liable for the debts, contracts, and liabilities of the town, and will be entitled to all of its rights, effects, money, and property, and may sue and be sued in relation thereto in the name of the city.

Effect of consolidation.—If the agreement be for the consolidation of the town and city, it must also contain a stipulation as to the name of the new corporation, and it will thenceforth constitute one city by the corporate name agreed on, and will be liable for the debts and liabilities of both the town and city, and will also be entitled to all the property and effects of both, and may sue or be sued in relation thereto by the name agreed upon.

When a town may be incorporated as a city.[1]—Whenever one-third of the voters of a town, as nearly as the number can be estimated, shall petition the board of trustees to have such town incorporated as a city, the trustees, by an order or resolution entered on their order-book,

[1] 1 R. S. 1876, 267.

must direct the marshal or other officer thereof to take the census of all persons residing within the corporate limits of the town at least forty days prior to the date of such order, and must issue to him a warrant for that purpose, and furnish him with the necessary forms to take such census. The statute does not provide for the manner of taking the census, but it must be intended that the names and ages of all persons residing within the limits of the town shall be taken.

When the taking of the census may be dispensed with.—If it be made to appear to the board of trustees, by the last census taken by the authority of the state, or of the United States, or by any enumeration made by the order of such board of trustees, within two years of the date of the receipt of the petition to incorporate the town as a city, that the town had two thousand five hundred inhabitants, the board may proceed without requiring the census to be again taken.

Duty of marshal.—The marshal, or other officer appointed to take the census, may, with the concurrence of the board of trustees, appoint assistants, and must, within sixty days from the time of receiving the warrant, make full return, under oath, to the board of the resident population of such town.

Duty of trustees on return of warrant.—If the return shows a population of two thousand persons or more, an election must be ordered, a day fixed therefor, and ten days' notice thereof given to determine, whether the town shall be incorporated as a city. Unless the return show a population of at least two thousand, no further steps can be taken. The board must appoint two judges and an inspector, in each ward, who must be voters of the town, and they must be furnished a ballot box for each ward by the trustees.

Failure of persons to serve as judge or inspector.—In case any judge or inspector fail to serve, the voters may choose

persons to serve as such in their place, who will discharge the same duties as if appointed by the board of trustees. And any person failing to serve as judge or inspector, after his appointment and acceptance, will forfeit and become liable to pay a penalty of not more than forty dollars.

Election, how conducted.—The election shall be conducted as other corporation elections, and the result will be determined in the same manner as in case of the incorporation of a town. If a majority of the ballots are found to be against the incorporation of the town as a city, no further steps can be taken, but if found to be in favor of incorporation, the voters will be deemed to have assented to it. Inspectors must make a statement showing the number of votes for and against incorporation, and the statement must be verified by the trustees, and, within five days after the election, must be filed with the clerk of the circuit court of the county. If such statement show a majority of votes in favor of incorporation, upon the proper filing thereof with such clerk, the town will thereafter be deemed an incorporated city. Within five days after the filing of the statement, the city must be divided into wards, not less than three in number, by the trustees, no ward containing less than three hundred inhabitants, and a notice of ten days must be given of an election to choose city officers. The notice must be given within five days, and specify the officers to be chosen, and must be published in one or more newspapers of such city, or in the county in which it is located, and must also be posted in three public places in each ward. The day on which the election will be held, and the places in each ward where a poll will be opened, must also be set forth in the notice.

CHAPTER XVI.

TOWNSHIPS.

How township may be established.[1]—The board of county commissioners in each county must lay off and divide the same into as many townships as the convenience of the citizens may require, and must make an accurate description of the boundaries of each township, and of all changes made, and of new townships formed, upon their record.

The commissioners may also, at any time, make such changes in the number, names, and boundaries of the townships as may be deemed proper.

It is the duty of the county board, in laying off civil townships, to conform the boundaries to those of Congressional townships, so far as it is practicable to do so.[2] The boundaries of the civil township will remain as now until changed by order of the proper board.

Proceedings to change boundaries.—The statute is silent as to the mode of proceeding to change a township boundary. There is no doubt, however, that the commissioners may, upon their own motion, without any petition, make such changes as, in their judgment, the interests of the inhabitants to be affected require.

Persons desiring such change may also petition the county board therefor, and the prayer of the petition may be granted if the commissioners consider it expedient to do so, without any notice. It is suggested, however, that unless it is clear that the interests of persons to be affected thereby will be promoted, no change ought to be made without notice of the pendency of such a proceeding, and an opportunity given to persons interested to remonstrate, who may desire to do so. The board may de-

[1] 1 R. S. 1876, 899. [2] 1 R. S. 1876, 811.

termine, in each case, what notice will be required, if any, and how and to whom the notice must be given. It would seem that, in almost any case that can arise, the trustees of the townships, the boundaries of which are to be changed, should be informed before any action is had.

Township is a body corporate.—Every township that is now, or may hereafter be, organized in any county in the state is, by statute, made a body corporate and politic by by the name of township, of county, according to the name of the township, and of the county in which it may be organized, and by such name may make contracts and sue and be sued in any court having competent jurisdiction.[1]

Summons against township, how served. — In all suits against a township, the statute requires that process shall be served at least ten days before the return day of such process, that is, ten days before the day of the trial of the cause in which the summons was issued; and it must be served by delivering a duly certified copy thereof to the trustee of the township. If the copy be left at the residence of the trustee, or if the summons be read to him only, the service will not be sufficient.

Township may appear by attorney.—The statute provides that the township trustee may appoint an attorney to defend in any proceeding or suit in which the township is interested.

Strictly construed, the statute would seem to limit the authority of the trustee to appoint an attorney only to cases where it is necessary to make defense in case a suit is brought against the township, but the obvious intention of the legislature was to confer upon the trustee the power to employ counsel to prosecute actions in favor of the township as well as to defend its interests when sued.

[1] 38 Ind. 41.

When townships may take stock in railroad companies.[1]—Whenever twenty-five freeholders of any township shall present a petition to the county board, asking that such township make an appropriation of money to aid any railroad company named in such petition, and then duly organized under the laws of the state, in constructing a railroad in or through the township, by taking stock in or donating money to such company, to an amount which must be specified in the petition, but not exceeding two per centum on the amount of taxable property of such township on the tax duplicate of the county, for the preceding year, it will be the duty of the board of commissioners, upon being satisfied that the petition has been signed by the requisite number of freeholders of the township, to take the same under advisement and to order the opening of the polls at the place or places of voting in the township so petitioning, on a day not less than thirty nor more than sixty days thereafter, and that on such day the votes of all the legal voters of the township be taken upon the question of making the appropriation.

The election will be conducted according to the rules governing other elections, so far as may be.[2]

When and how tax may be levied.—If a majority of the votes be in favor of the appropriation, the county commissioners, at their ensuing June session, must grant the prayer of the petition and levy a tax of at least one-half of the amount specified in the petition, but not exceeding one per centum upon the real and personal property in the township, liable to taxation for state and county purposes, which will be collected as other taxes. The residue of the taxes, if any, must be levied the succeeding year.

Tax must not exceed two per cent. in two years.—No township can raise by taxation for such purpose more than two per centum upon the taxables of the township, as they ap-

[1] 1 R. S. 1876, 736. [2] 49 Ind. 1; 39 Ind. 539; 36 Ind. 320.

pear on the tax duplicate of the county in one period of two years.

When railroad company may receive the tax collected.—The railroad company will not be entitled to receive to exceed fifty per cent. of the money voted to be appropriated to such company, until the iron is laid upon the road, and a train of cars shall have passed over the entire length of the road in such township.

By an act passed at the regular session of the legislature of 1877, it is provided that any railroad company organized at the time of the passage of the act and to which any township had or may hereafter make an appropriation of money to aid such company in the construction of a railroad through such township by taking stock in or donating money, shall have five years from the passage of the act to complete the railroad for use, and, when completed, the company will be entitled to the appropriation; provided the company commenced, or shall commence, work upon its road within two years from the date of levying the tax.[1]

Persons paying tax to have special receipts.—Any person paying taxes assessed in aid of any railroad is entitled to a receipt from the county treasurer, stating the amount of tax paid, the date of payment, and the name of the railroad in aid of which the tax was paid.

Receipts assignable in writing.—Such receipts may be assigned in writing, and the holder thereof may present and surrender such receipts to the proper railroad company at any time within four years after the tax has been paid, in sums equal in amount to any number of shares in the capital stock of the company, and the company will be required to issue to such holder a certificate of paid-up capital stock to the amount of such receipts; but the company will not be required to issue certificates of stock to individuals to an amount greater than the money received from the town-

[1] Acts 1877, 111.

ship or county, as the case may be, and the expenses of the election, which must be paid by the railroad company, if the vote was favorable to the appropriation.

Duty of auditor where stock is not applied for.—After the time for the presentation and surrender of receipts by individuals has expired, the county auditor must examine the books of the railroad company, and ascertain the amount of stock that has been paid for by such taxes which has not been applied for by individuals within the time limited for that purpose, and shall require the company to issue to the several civil townships of his county, certificates of stock in proportion, as nearly as may be, to the number of children in such townships between the ages of six and twenty-one years, according to the last enumeration for school purposes; which stock, with all dividends thereon, shall be a part of the school funds of such townships. But such stock must only be distributed among such townships as have paid taxes.

When township trustees may vote stock.—Township trustees have the right to vote stock held by their respective townships at all stockholders' meetings.

CHAPTER XVII.

TOWNSHIP TRUSTEES.[1]

The qualified voters in each township shall, on the first Monday of April of each alternate year, commencing with the year 1878, elect a township trustee, who shall hold his office for two years, and until his successor is elected and qualified.

He must take an oath or affirmation, before some officer authorized to administer the same, to faithfully discharge his duties, and must execute a bond, conditioned as in ordinary official bonds, with at least two sufficient freeholders as his sureties, which bond he must present to the county auditor for his approval, and with whom the same must be filed. No person can hold the office of township trustee for more than four years in any period of six years.[2]

Vacancy in office of trustee.—In case of a vacancy in the office of township trustee, by resignation or otherwise, the board of county commissioners, if in session, will fill the vacancy by appointment; if not in session, the county auditor must make the appointment, and the person so appointed will hold the office until his successor is elected and qualified, and he must file a like bond and take the same oath required of persons elected to the office.

Resignation of township trustee.—Township trustees wishing to resign their offices will tender their resignations to the board of county commissioners, if in session, and if not in session, to the county auditor.

Duties of trustees.—First. He must keep a true record of all his official proceedings in a book which he must provide for that purpose.

[1] 1 R. S. 1876, 900. [2] Acts 1877, Special Session, 79.

Second. He must receive all money belonging to the township, and pay the same out according to law, as right and justice shall require.

Third. He must divide his township into convenient highway districts, and make such alterations in the same as may be necessary.

Fourth. He must fill all vacancies that occur in the office of supervision of highways in his township.

Fifth. He must make a proper application of all money belonging to his township for road, school, or other purposes, and perform all the duties formerly required of the board of township trustees, clerk, and treasurer, under the road supervisor and school acts, except where any of such duties are by statute conferred on other officers.

Sixth. He must superintend all the interests of his township, and take care of and manage all the property thereto belonging.

Seventh. He must make a record accurately defining the boundaries and number of each road district in his township, and all alterations made in the boundaries of a district must be accurately described in the record.

Eighth. He may administer all other oaths necessary in the discharge of the duties of his office.

Ninth. He shall be inspector of elections, overseer of the poor, and fence viewer, and shall superintend all the pecuniary concerns of his township, and shall annually at the June session of the county board, with the advice and concurrence of the county commissioners, levy a tax on the property of his township for township, road, and other purposes, and must report such levy to the county auditor, who will place the same on the tax duplicate for collection as other taxes.

If the trustee and the county board can not agree as to the amount of the tax to be levied, the board will make the levy without regard to the views of the trustee.

Tenth. He must examine and settle all accounts and de-

mands chargeable against his township, and must keep an accurate account current with the township, which shall be so arranged and kept as to show the amount received and paid out on account of separate and distinct funds, and to whom paid, as well as the whole receipts and expenditures by one general account, and he must file all accounts as vouchers, and report the same under oath or affirmation to the county board in his annual settlement.

Must settle with the road supervisors and report to commissioners.—He must also on the last Saturday of February of each year settle with and audit the accounts of road supervisors in his township, and within five days thereafter make a complete report to the county board, showing the receipts and expenditures of his township during the preceding year, which report must exhibit the amount received and expended on account of township, road, school, and other purposes, as well as the proper balance remaining on hand, and within ten days thereafter he must record the report in the township record, and post a certified copy of the same at the place or places of holding elections in his township.[1]

When trustee must receive township money from county treasurer.—Immediately after the settlement by the county treasurer with the county auditor on the third Monday of March of each year, the trustee shall receive from such treasurer, on the warrant of the auditor, all money in the county treasury belonging to his township, for which he must give his receipt.

Trustee must make an itemized statement of charges.—Trustees at the time of making their annual settlement with the county board in February must file with such board an itemized statement of their charges and services as trustees, under oath, and the commissioners must allow them

[1] The statement of the trustee in his report of the amount of money in his hands is conclusive against him and his sureties on his official bond. 29 Ind. 530; 44 Ind. 287.

two dollars and fifty cents per pay for all the time necessarily employed by them in the discharge of their duties as such trustees, which must be paid out of the funds of their townships respectively.

Township trustees' record to be open.—The record and other books of township trustees must be at all times open to public inspection.

Penalty for failing to discharge duty.—Any person elected or appointed to the office of trustee, who shall, after having accepted the office, fail to perform any duty required of him by the act providing for the more uniform mode of doing business, approved February 18, 1859, will forfeit and become liable to pay to the township in which he may have been elected or appointed any sum not exceeding one hundred dollars, which may be recovered in an action in the name of such township before any court having competent jurisdiction.

Township trustees must give notice of day they will attend to township business.[1]—Township trustees are required by statute to designate such number of days of each week or month in which they will attend to township business, and to give notice of the particular days upon which and the place where such business will be attended to. The notice may be given in a newspaper published in the township or county, if there be one; if not, by posting written or printed notices in such number of public places as will generally inform the inhabitants of the township. All contracts must be made and all claims audited and paid only on such designated days.

When and how trustee may contract debts.[1]—When in the opinion of the township trustee it becomes necessary to incur in behalf of the township any debt or debts the agg e-gate amount of which shall be in excess of the fund on hand to which such debt or debts are chargeable and of the fund to be derived from the tax assessed against his town-

[1] 1 R. S. 1876, 903.

ship for the year in which such debt is to be incurred, he must first procure an order from the board of county commissioners of his county authorizing him to contract such indebtedness.

Petition must be filed.—Before the county board will be authorized to grant such order, the trustee must file a petition in the auditor's office of his county, in which he must set forth the object for which such debt or debts are to be incurred, and the approximate amount required, and must also make an affidavit that he has caused notice to be given of the pendency of such petition by posting notices in not less than five public places in his township, at least twenty days prior to the first day of the session of the board.

The form of the petition may be as follows:

FORM OF PETITION BY TOWNSHIP TRUSTEE FOR AN ORDER TO CONTRACT DEBT.

To the Honorable Board of County Commissioners of the County of .

Your petitioner, , trustee of township, of county, would respectfully show that it has become necessary for him, as such trustee, to contract a debt on behalf of such township for the purpose of [*here state the object for which such debt is to be incurred*]; that the approximate amount of money required for such purpose, as nearly as he has been able to ascertain the same, is [*here state the amount*]. Your petitioner further shows that the amount of said debt is in excess of the fund now on hand, to which such debt is chargeable, and is in excess of the fund which will be derived from the tax assessed against said township for the year [*state the year in which the debt is to be incurred*]. Wherefore he prays for an order by your board authorizing him to contract such indebtedness on behalf of said township.

A—— B——.

Trustee, etc.

FORM OF NOTICE OF FILING PETITION.

Notice is hereby given that the undersigned trustee of township, of county, will present to the board of county commissioners of county, at this December session, 1877, his petition praying for an order of said board authorizing him as such trustee to contract an indebtedness on behalf of said township for the purpose of [*here state the object for which the indebtedness is to be created*], to the amount of about [*here state the amount*]. Said petition will be presented to said board on the first day of said December session of the board, to be held at the court-house in said county, and commencing on the third day of December, 1877.

A—— B——,
Trustee, etc.

FORM OF AFFIDAVIT OF POSTING NOTICES.

State of Indiana, County of :

A—— B——, trustee of township, of county, being duly sworn, on oath states that he posted copies of the above notice in five public places in said township twenty days before the third day of December, 1877.

A—— B——,
Trustee, etc.

Subscribed and sworn to, etc.

Duty of county commissioners.—The county board may exercise its discretion in granting the prayer of the petition, and is not bound to make the order as a matter of course. It is also the duty of the commissioners to permit remonstrances to be filed if any of the tax-payers of the township desire to make objection to the granting of the prayer of the petition.

Power of trustees to make contracts.—Township trustees have no power to make contracts, except for purposes con-

templated by the statute. And in a case where a township trustee illegally contracted for the building of a bridge under a mistake of law, in which the other contracting party equally participated, both parties having equal means of information, and neither party looking to any personal liability, it was held that neither the township nor the trustees personally would be liable.[1]

In certain cases a township trustee may take a promissory note to secure a debt due his township. Where a trustee had obtained a judgment, and an execution had been issued thereon, and property levied upon, took the promissory note of the judgment defendants, with others as their sureties, conditioned that the sale of the property levied on should be postponed until the maturity of the note, it was held that the note was valid, and that its payment would satisfy the judgment.[2]

Trustee can not loan money of his township.—A township trustee has no authority to loan the money of his township, and where a trustee loans money of his township in such a manner as to make the loan a conversion of the money to his own use, and takes a note therefor payable to himself as trustee, he will be liable on his bond for the money, and the township will have no right of action on the note.[3]

The trustee loaning the money could, however, maintain an action therefor upon the note in his own name.

A township trustee is bound to account for and pay over all money of his township coming to his hands, although the same may be loaned out, or if the same is stolen or burned without his fault.[4]

Duties of trustees as to location of school houses.—A trustee can not be compelled to locate and build a school house on land that does not belong to his township, even if the county superintendent, on appeal from the decision of the

[1] 18 Ind. 396. [2] 16 Ind. 254. [3] 19 Ind. 204. [4] 36 Ind. 346.

trustee, has rendered a judgment that he should erect a school house on such land.

Nor can he be so compelled if a petition by certain inhabitants of the proper school district be presented to him praying for such location and building, and stating that the land will be deeded to the township on the acceptance of the location, and upon the order of the trustee to build.

A trustee has also the power to change the location of a school house, even after it has been established by the county superintendent on an appeal to him from the decision of the trustee.[1]

Trustee must perform the duties required of him by the supervisors' act.—Township trustees must see that supervisors are provided in each road district of their township. In case of a vacancy from any cause they must fill the vacancy by appointment.

The certificate of appointment may be as follows:

FORM OF APPOINTMENT OF SUPERVISOR.

State of Indiana, County of Switzerland, ss.

Whereas, it has been made known to me that a vacancy exists in the office of supervisor of highways in road district No. 5, in Cotton township in said county, by reason of the failure of the voters of said road district to elect a supervisor at the last township election [*or whatever the cause of the vacancy may be*], therefore it is hereby certified that I have appointed William Dunning to fill the vacancy in said office thereby created, and to serve as supervisor of highways in said road district until the next township election.

Witness my hand the 20th day of September, 1877.

JAMES MCHENRY,
Trustee, etc.

Duty of trustee when person elected supervisor refuses to serve.—Upon the failure of any person elected as supervisor

[1] 44 Ind. 323.

to qualify and act as such, if he be a person who is by statute required to serve, the trustee must within twenty days after such refusal bring an action against him for six dollars, unless the money be paid into the township treasury without suit.

The complaint may be as follows :

FORM OF COMPLAINT AGAINST A PERSON ELECTED AS SUPERVISOR FAILING TO SERVE.

Clay Township, of Dearborn County, *v.* John Williams.	Before Thomas Hess, Justice of the Peace.

Clay township, of Dearborn county, complains of John Williams, and says, that on the fifth day of April, 1878, the defendant was duly elected supervisor of highways in road district number two, in said township, and that on said day the defendant was a resident freeholder of said road district, and over the age of twenty-one years, and under the age of fifty years, and had not served as supervisor of highways for six years next preceding the day of said election, and was eligible to the said office, and liable to serve as such supervisor, and that although said defendant had due notice of his said election has wholly failed to accept said office, and has also failed to pay into the treasury of said township the sum of six dollars, as commutation therefor. Wherefore, the plaintiff demands judgment for six dollars for the use of said road district.

CLAY TOWNSHIP, OF DEARBORN COUNTY,
By Hamilton Conaway,
Trustee.

Certificate of exemption from road labor.—Township trustees must give to persons belonging to any legally organized fire company, and to persons unable, from bodily infirmity, to perform ordinary labor, and who are too poor

to pay the commutation, a certificate of the facts to be presented to the supervisor.

The certificate may be as follows:

FORM OF CERTIFICATE FOR EXEMPTION FROM ROAD LABOR.

State of Indiana, Dearborn County, ss.

I, George W. Roberts, trustee of Manchester township, of said county, hereby certify that Jonas Brown is unable, from bodily infirmities, to perform ordinary labor, and that he is too poor to pay the commutation to exempt him from highway labor [*or that he is an acting member of a legally organized fire company in* .]

GEORGE W. ROBERTS,
Trustee.

The trustee does not determine the question whether the person is entitled to exemption, but only certifies the facts. The supervisor, if he believes that the certificate is untrue, or that it was procured by fraud, may disregard it. But the certificate will be presumed to be true until the contrary is shown.[1]

Duty of trustees in letting contracts to keep roads in repair.—When township trustees determine to keep the highways and bridges in repair by contract, notice must be given that proposals will be received for the work, and the contracts must be awarded to the lowest responsible bidders. Notices, which may be either written or printed, must be posted in three of the most public places in the township. No particular form of notice is required. It will be sufficient to plainly state the object of the notice, and the time and place where such proposals will be received. The statute seems to contemplate that bids shall be received for each road district separately, and that the trustee may let such contracts as to a part or all of the road districts, as he may deem proper. The posting of the

[1] 23 Ind. 479.

notice should not be confined to the districts in which the contracts are proposed to be made, but should be posted in the most public places in the township.

Duty of trustee where supervisor fails to report.—If any supervisor fail to make the report required of him by law, on the last Saturday of September of each year, and to pay to the trustee of his township, on that day, any unexpended funds that may be in his hands, it will be the duty of such trustee to bring a suit before any justice of the peace of the township against the supervisor to recover the money. The complaint may be as follows:

FORM OF COMPLAINT BY TRUSTEE AGAINST A SUPERVISOR FOR FAILING TO REPORT AND PAY OVER MONEY.

Cotton Township of Switzerland County } Before Hervey Littlefield, Justice of
vs. } the Peace.
Andrew Hardy.

Cotton township of Switzerland county complains of Andrew Hardy, and says that the defendant was duly elected supervisor of highways in road district number five in said township, at the election in said township, held on the fifth day of April, 1876, and that he accepted said office and has ever since acted as such supervisor, and that as such supervisor he failed and neglected, on the last Saturday of September, 1877, to make to the trustee of said township a full and succinct report, under oath, of his proceedings, showing the names of all persons liable to, or who have performed labor on the roads in said district, the amount of commutation money received by him, and who the same was received from, any and all other sources whatever, and how the same has been expended, and has wholly failed and neglected, and still so fails and neglects to make any report whatever, as such supervisor to said trustee; and that although said defendant had in his hands on said last Saturday in September, as such supervisor, the sum of

twenty-five dollars, collected by him as commutation money from persons liable to perform highway labor in said district (*or if from any other source the fact should be stated*) and which sum on said day remained unexpended, for the benefit of the highways in said district, and said defendant still unlawfully withholds the same; wherefore plaintiff demands judgment for said sum of twenty-five dollars, and interest thereon from the last Saturday in September aforesaid. COTTON TOWNSHIP OF SWITZERLAND COUNTY,

By JAMES MCHENRY,
Trustee.

SCHOOL LAW FORMS.

The following forms, prepared and approved by the state superintendent of public instruction, are inserted here for the benefit of township trustees and other officers concerned in the administration of the school law. To insure uniformity in the administration of the law governing common schools, these forms should be used in all cases.

NOTICE OF SCHOOL MEETING.

(School Law, Section 26.)

Notice is hereby given that a meeting of the legal voters of school district No. , township, county, in the State of Indiana, will be held at the school house of said district, on , the day of , 187 , at o'clock , for the purpose of [*here state object of the meeting*], and for the transaction of such other business as may legally come before it.

—— ——,
——187 . *Director.*

Where five voters join in calling a school meeting, as the statute provides they may do, the above form may be used, but should be signed by the person calling the meeting.

Record of Proceedings of School Meetings.

(School Law, Section 29.)

Pursuant to notice, the legal voters of school district No. , township, county, in the State of Indiana met at the school house in said district, on the day of , 187 , at o'clock , the director presiding.

On motion of the meeting fixed the day of , 187 , as the time when the school shall commence.

On motion of , it was

Resolved, That this meeting hereby petition the trustee of the township to furnish a full set of seats and desks for the school house, the same to cost about $5 each, or in the aggregate, $200.

On motion of meeting adjourned.

——— ———,
Director.

A copy of the proceedings of the school meeting should be certified by the director and delivered to the trustee. The certificate may be as follows:

I, , director of school district No. , township, county, in the State of Indiana, hereby certify that the foregoing is a full and correct copy of the record of the proceedings of a school meeting held in said district on the day of 187 , pursuant to notice legally given.

——— ———,
Director.

A copy thus certified and filed with the trustee will be sufficient notice to him of the action of the school meeting.

The statute provides for an appeal from the decision of a school director, excluding a pupil from school, to the township trustee, but is silent as to the mode of taking the appeal.

The ruling of the department of public instruction is that the appeal may be taken by the parent or guardian who may feel aggrieved by such decision, by filing with the township trustee a statement in writing that his child, or ward, has been excluded from school without good cause, and praying that the trustee will hear and determine the matter according to the following form:

FORM OF APPEAL FROM DECISION OF DIRECTOR TO TRUSTEE.

(School Law, Section 32.)

To , Trustee of Township, of County, in the State of Indiana.

James Smith would respectfully show that his son, John Smith, a pupil in school No. 1, in said township, was, on or about the day of , 1877, excluded from said school by , the director thereof, for the term of thirty days, without sufficient cause; wherefore he prays that an appeal from the decision of said director be granted him, and that the case may be heard and determined by the trustee.

JAMES SMITH.

October 10, 1877.

Upon the filing with the trustee of the prayer for the appeal, it is his duty to forthwith notify the director of the fact that an appeal has been taken from his decision, and of the time and place where the same will be heard and determined, as follows:

NOTICE OF APPEAL FROM DIRECTOR.

(School Law, Section 32.)

To , Director of School No. , Township, County, in the State of Indiana.

On the day of , 18 , James Smith filed with me his complaint, alleging that John Smith has been by you, without good cause, excluded from said school for the

period of thirty days, and praying an appeal to me as trustee of said township.

You are hereby requested to notify all parties interested to attend at on the day of , 18 , at which time and place said appeal will be heard and determined.

—— ——,
Trustee.

The law makes no provision for procuring the attendance of witnesses. The director should, however, notify the teacher of the school, and such witnesses as the teacher may designate, and, also such witnesses as he may himself know have knowledge of important facts. The party prosecuting the appeal also has the right to produce such witnesses as he may desire. The trustee may examine the witnesses under oath, and has authority, by virtue of his office, to administer such oaths. The trustee's record may be as follows:

TRUSTEE'S RECORD OF APPEAL FROM SCHOOL DIRECTOR.

On the day of 18 , James Smith filed with me his complaint, alleging that his son, John Smith, had been excluded from school No. , by director of said school, without sufficient cause, and praying an appeal from said decision of the director.

Said appeal was set for hearing on the day of , 18 , at o'clock, , of which due notice was given to the director of said school, who was requested to attend the trial of said appeal, and bring with him such persons as know the truth of the matter in controversy, so that the trustee might be fully informed in the premises.

On the day of , came the appellant, and the teacher and director of said school, and the trustee being fully informed in the premises, by the allegations of the parties and the examinations of witnesses, affirmed (or re-

versed) the decision of the director, excluding said John Smith from school.

Trustee.

In fixing the time for hearing the appeal, the trustee should take into consideration the circumstances of the case; and should set as early a day as possible, giving sufficient time for the parties to be ready, and while it is necessarily a summary proceeding, there seems to be no good reason why both sides should not be fully heard. There is no appeal from the decision of the trustee.

Trustees may receive and consider petitions and remonstrances filed with them in relation to the location and erection of school houses. In such case they may enter the proceedings upon their record as follows:

TRUSTEE'S RECORD OF PROCEEDINGS ON A PETITION FOR ERECTION OF A SCHOOL HOUSE.

On the day of , 18 , and others filed with me their petition praying the location of a school and erection of a school house at

Not being fully advised in the premises, the day of , 18 , was set for hearing said petition, and the parties notified accordingly.

On the day last mentioned came the petitioners, and and others remonstrating against granting the prayer of said petition.

The petitioners and remonstrants being fully heard, the prayer of said petitioners is granted.

And and others, remonstrants, pray an appeal to the county superintendent which is granted,

Trustee.

If an appeal be taken from his decision, the trustee should at once make out a complete copy of his record in the case,

and certify it to be true and complete, and file such copy with all the papers relating to the matter, whatever they may be, with the county superintendent, who must, without unnecessary delay, determine the appeal.

Report of Trustee to Superintendent, of Children Enumerated and Transferred.

(School Law, Section 16.)

——, 1877.

Report of the trustee of township (town or city), county, to the county superintendent, showing the names of persons transferred to said , with the number of children enumerated for school purposes in charge of each of such persons, as required by the latter clause of the sixteenth section of the school law.

	Names of Persons transferred	Township, Town or City from which transferred.	No. of Children in charge of Person transferred.				
			White Males.	White Females.	Colored Males.	Colored Females.	Total.

I, , school trustee of the township (town or city) of , do solemnly swear that the foregoing is a correct list of all persons transferred to said , and that it shows correctly the number of children in charge of the persons so transferred, and that all the matters therein contained are correct.

——— ———,

Trustee.

TRUSTEE'S REPORT OF ENUMERATION OF PART OF A CONGRESSIONAL TOWNSHIP, DIVIDED BY A COUNTY LINE, TO THE COUNTY SUPERINTENDENT OF THE COUNTY IN WHICH THE FUND OF SUCH TOWNSHIP IS MANAGED.

(School Law, Section 19.)

——18 .

To the county superintendent of county:

I hereby submit the following report of the enumeration of children for school purposes in that part of congressional township No. , Range , which forms part of township, in county, and whose funds is managed in your county:

	Names of Parents, Guardians, and Heads of Families.	No. of Children in charge of.				
		White Males.	White Females.	Colored Males.	Colored Females.	Total.

I, , school trustee of the of , of county, Indiana, do solemnly swear that the foregoing report is, in all respects, true and accurate as I verily believe.

——, *Trustee.*

Subscribed and sworn to before me this day of 18 .

——.

Form of Trustee's Account of School Revenue.

(School Law, Section 7.)

Account of Tuition Revenue.

RECEIPTS.			EXPENDITURES.			
Date of Receipt.	Source whence received.	Amount	Date of expenditure.	To whom and for what paid.	No of Voucher.	Amount
June 20.	June apportionment	$500 00	Oct. 25.	John Smith, for teaching in school No.....	1	$100 00
" "	Local tuition tax....	300 00				
Nov. 25.	Nov. apportionment	100 00	Oct. 30.	William Jones, teaching School No.....	2	100 00
" "	Local tax.....	25 00				
			Nov. 3.	James Wilson, teaching School No.....	3	90 00

In reference to the above form of account, the superintendent of public instruction says:

"If this account is carefully kept according to the above form, there can never be any difficulty in determining the amount on hand at any given date, or the amount paid out between any two dates, included in the time the account runs. In short, trustees can never have any difficulty in making their September reports of revenues received and expended, whether the accounts have been kept by themselves or others. Thus one great source of error will be obviated. An account exactly similar in form must be kept in the special school revenue.

"The above form is intended to be kept on two opposite pages."

Notice of Transfers for School Purposes.

(School Law Section 16.)

_____ _____, 18 .

To the School Trustee of , in the County of , and State of Indiana.

You are hereby notified that the persons named in the

annexed list have been by me transferred to your , for school purposes under the provisions of section 16 of the school law; and that the number of children in charge of each, subject to the enumeration for school purposes, distinguishing between male and female, is correctly shown in the ruled columns to the right, opposite the name of the person transferred.

	Names of Persons Transferred.	No. of Children in Charge of each.					Cong'l Town's in which said persons reside.	
		White Males.	White Females	Colored Males.	Colored Females	Total.	No.	Range.

Witness my hand this day of , 18 .

School Trustee of .

In submitting the foregoing form of notice, the state superintendent makes the following suggestions:

"For the sake of uniformity, this notice is arranged to show the congressional townships in which the persons transferred reside. The utility of this may seem doubtful, as there is no provision of law that persons transferred to a civil township, beyond the limits of their congressional township, shall receive their congressional township revenue in the civil township to which they are transferred. Such a provision would, in fact, in almost every case, have no other effect than to annoy and confuse officers with a multiplicity of intricate accounts. Still, as the law requires that the trustee's report shall show the congressional

townships in which the children in their respective corporations reside, and as a case possibly may arise in which such a showing would be essential to a correct administration of the law, it should never be omitted."

Basis of Apportionment.

(School Law, Section 42.)

Basis of apportionment of common school revenue to the several townships, towns, and cities of county, in the State of Indiana, made by , county superintendent, and filed with the auditor of said county, on the first day of June, 18 , as required by section 42 of the school law :

	Names of Townships, Town or City.	No. and Range of Congressional Townships and the parts of Congressional Townships forming school corporation.	No. of children in each Congression'l Township and part thereof included in or forming school corporation	Whole number of children to each civil Township, Town, or City.	

I, , county superintendent in and for said county, hereby certify that the foregoing correctly shows the name of each school corporation in said county, the congressional township and parts of congressional township which form or include each school corporation, the number of children enumerated for school purposes in each congressional township and part thereof, when the same includes or is included in two or more school corporations, and the

whole number of children so enumerated in each school corporation.

——— ———,

County Superintendent.

Statement of Transfers for School Purposes.

(School Law, Section 13.)

Statement of transfers for school purposes, which have been made under sections 14 and 16 of the school law, made and filed with the county auditor by , county superintendent of county, pursuant to the latter clause of section 13 of the school law.

	Names of persons transferred	Date when transfer was made.	Township, Town or City in which person transferred resides.	Township, Town or City to which transfer was made.	

I , county superintendent of said county, hereby certify that the foregoing is a complete list of all transfers for school purposes now existing in this county, so far as the same have been reported to me.

——— ———

County Superintendent.

"This statement must be made annually, and must include not only the transfers made at the enumeration which is being reported, but all transfers in fact existing. Upon this latter point the law is not express, but it is thought best for the sake of certainty and convenience, to require annu-

ally a full statement of all transfers in fact existing on the first day of May."

ENUMERATION OF CONGRESSIONAL TOWNSHIPS DIVIDED BY A COUNTY LINE.

(School Law, Section 42.)

Statement by the county superintendent to the auditor of county, showing the congressional township, lying partly in said county, and partly in others, whose funds are managed in said county, the number of children enumerated for school purposes in each part and in the whole of said townships:

	No. and Range of divided Township.	Coun'ts in which the several parts of such Townships lie.	No. of Children in each part of such Townships	Whole number of children in each of such Townships.	

I, , county superintendent of county, hereby certify that the foregoing correctly shows the congressional township divided by the county line, whose funds are managed in this county, the number of children enumerated in each part of each of the townships so divided, and the whole number enumerated in each of such townships, according to the latest reports of trustees now on file in my office.

——— ———

County Superintendent.

The statute does not specify the steps to be taken to procure the revocation of a teacher's license.

The county superintendent may act upon his own motion without any petition. It is clearly his duty, when complaint is made to him in writing, to notify the teacher complained of and advise him of the charges made against him, and afford him an opportunity to make his defense.

NOTICE TO A TEACHER OF PROCEEDINGS TO REVOKE HIS LICENSE.

County Superintendent's Office, *County*, 18 .

——— ———

You are hereby informed that proceedings have been commenced in my office for the revocation of your license as a school teacher of said county.

You are charged with (here insert general charge, as cruelty, immorality, incompetency, or general neglect of business.)

And it is alleged that on or about the day of , 18 , at , and at divers other places, you (here insert specific charge).

I will, at my office, on the day of , 18 , investigate these charges by the examination of witnesses.

You are hereby notified to attend at said time and place, and have present such witnesses as you deem necessary to your defense.

——— ———

County Superintendent.

NOTICE TO TRUSTEE OF REVOCATION OF TEACHER'S LICENSE.

County Superintendent' Office, *County*, 18 .

———— ————,

School Trustee of .

You are hereby notified that the license of , a school teacher of this county, which was issued on the day of , 18 , by , then county superintendent of said county, has been by me this day revoked

for , by virtue of the authority vested in me by the thirty-sixth section of the school law.

You will take due notice of this revocation, as hereafter it will be unlawful to employ said to teach in any of the schools of this county, unless he shall again be licensed.

Witness my hand this day of 18 .

County Superintendent.

"There is no provision of law requiring this notice to be given to trustees. It is nevertheless necessary. Without it trustees will not be warned against employing the teacher whose license is revoked, as it can not be supposed that they will have personal knowledge of the revocation. It should be given to each trustee in the county, and entered upon the records of the county superintendent's office. The revocation will then be made effectual, and become a matter of more concern to teachers."

The superintendent should make a record of his proceedings in such cases, and if his action is based on a petition, he should also set out in the record a copy of the complaint filed with him for the revocation of the license.

The township trustee may dismiss a teacher at any time for good cause shown upon a petition signed by a majority of the voters in any school district.

The department of public instruction has not prescribed any form for such petition, but no particular formality is required in such case. The following will be sufficient:

PETITION FOR DISMISSAL OF TEACHER.

(School Law, Section 28.)

To , Trustee of Township of County, State of Indiana:

Your petitioners, constituting a majority of the voters of school No. , in said township, hereby request that , the teacher of said school may be dismissed from his em-

ployment as such teacher for the following reasons [*here state the grounds of complaint*]:

October 2, 1877.

[*Petitioners' names.*]

The statute requires that due notice of the pendency of the petition shall be given to the teacher, but does not fix the length of notice which the teacher should have of the time of hearing the complaint. Three days will ordinarily be sufficient. The trustee, should, however, allow the teacher ample time, in all cases, to fairly present his defense, but should not permit unreasonable delay.

NOTICE TO A TEACHER OF PETITION FOR HIS DISMISSAL.

(School Law, Section 28.)

Trustee's Office, *Township*, , 18 .

——— ———:

A petition, signed by a majority of the legal voters of school No. , in said township, has this day been filed with me, praying your dismissal from employment as teacher of said school, and alleging as cause therefor [*here insert cause alleged.*]

Said petition will be heard at , on the day of 18 , at o'clock .

You are hereby notified to attend at said time and place, and have with you such witnesses as you deem necessary to your defense.

———,

Trustee.

Before entering upon the discharge of their duties, the county superintendent must take an oath in the following form, which may be administered by any officer having authority to administer oaths.

OATH OF OFFICE OF COUNTY SUPERINTENDENT.

(School Law, Section 33.)

I, , do solemnly swear that I will support the Constitution of the United States, and the Constitution of the

State of Indiana; and that I will perform all the duties of the office of county superintendent of county, honestly, impartially, faithfully, and according to law, to the best of my ability, during my term of office.

——— ———.

Sworn and subscribed before me, , a , on the day of 18 .

County superintendents may be removed from office by the county board, for good cause shown. The statute does not specify by whom or by how many persons such petition must be signed. It would seem to be clear that any voter of the county has the right to institute a proceeding for the removal of the superintendent. The proceedings may be instituted by filing a petition with the county commissioners similar in form to a petition for the dismissal of a teacher, or it may be by complaint. The charges against the superintendent should be clearly and plainly stated.

NOTICE OF PROCEEDING TO REMOVE COUNTY SUPERINTENDENT.

(School Law, Section 33.)

Before the Board of County Commissioners, Term, 18 .

———— ————,

County Superintendent of County.

A (here insert nature of writing, as complaint or petition,) has been filed with the board of county commissioners of said county, charging you with , in this, that on or about the day of , 18 , at , and at divers other times and places, you (here insert charge), and praying your removal from office as county superintendent.

You are hereby notified that said will be heard and determined at the next term of the board of county commissioners, to be begun and held at , on the day of , 18 , and to be present and answer said .

Witness my hand and official seal, this day of , 18 .

____ ____

Auditor.

FORM NO. 19.—NOTICE GIVEN BY THE AUDITOR OF A COUNTY, MANAGING THE FUND OF A CONGRESSIONAL TOWNSHIP, DIVIDED BY A COUNTY LINE, TO THE AUDITOR OF THE COUNTY IN WHICH A PART OF SUCH TOWNSHIP LIES.

(School Law, Section 112.)

Auditor's Office, County, Ind.

____ ____,

Auditor of County:

You are hereby notified that there is due from this county to that part of congressional township No. , range , lying in your county (the fund of which township is managed in this county), the sum of $.

The enumeration of said township, according to the latest reports on file in my office, is as follows:

Part lying in county,

Part lying in county,

The last enumeration of that part lying in your county, on file in my office, bears date of the day of , 18 .

The whole amount of revenue now on hand belonging to said township is $, giving cents per child enumerated for school purposes in the township.

Witness my hand and official seal this day of , 18 .

____ ____,

Auditor.

"This form designedly calls for a very full report, in order that the county auditor receiving the notice, and through him the county commissioners, may be informed whether the enumeration of that part of the congressional township lying in their county is properly reported to the

county superintendent of the county in which the fund of such township is managed, as required by section 19 of the school law, and in order that all ground for suspicion of unfairness or impartiality may be removed. Many complaints come to this office concerning the division of the revenues of congressional townships divided by county lines, and occasionally officers making the division are charged with partiality.

"It is believed that the use of this form will effectually prevent complaints and intimations of unfairness."

FORM OF CONTRACT BETWEEN TRUSTEE AND TEACHER.

It is hereby contracted and agreed between A—— B——, township trustee of township, county, State of Indiana, and C—— D——, a regularly licensed teacher of said county, that the said C—— D—— shall teach the school in district number in said township, for the term of weeks of five days each for the sum of dollars per day, commencing on the first day of October, 1877. And the said C—— D—— agrees faithfully to teach said school to the best of his ability, and to keep a register of the daily attendance of each pupil connected with the school, and make such report to the said township trustee, or to his successor in office, as is required by law, and to observe and enforce all rules and regulations established by the township trustee for the management and government of said school.

And it is further agreed by the parties hereto that the said C—— D—— shall use his best endeavors to preserve in good condition the school house and premises connected with it, and also the furniture and apparatus belonging thereto, and also all books and records provided by the said trustee for the use of said school, and to deliver the same to the said trustee or to his successor in office, at the close of said term of school in as good condition as when received, natural wear and tear excepted. And it is further agreed that

said C—— D—— shall attend the full session of each teachers' institute held in said township during the continuance of said school, and if he shall fail so to do he will forfeit one day's wages, as such teacher, for every day he may be absent from such institute, unless such absence shall be occasioned by sickness.

And the said trustee agrees to keep the school house in said district in good repair, and to provide the necessary fuel for the use of said school during said term, and to pay to said C—— D—— the sum of dollars, said sum being the amount of wages at dollars per day, as above agreed upon, to be paid upon the receipt by the trustee of the report by said C—— D—— as teacher of said school, made, subscribed, and sworn to (or affirmed), as the law provides.

Provided, that in case said C—— D—— shall be dismissed from school by the said trustee for gross immorality, incompetency, or any violation of this contract, or if his license as a teacher shall be annulled by the county superintendent, he shall not be entitled to any compensation as such teacher from and after such annullment or dismissal.

In witness whereof, we have hereunto subscribed our names this day of , A. D. 1877.

A—— B——,
Township Trustee.
C—— D——,
Teacher.

FORM OF TEACHER'S REPORT TO TOWNSHIP TRUSTEE, REFERRED TO IN THE FOREGOING CONTRACT.

Report of the teacher of School No. , in the township of , county of , and State of Indiana, to the Trustee of said township, for the school term opening on the day of 18 , and closing on the day of 18 .

Statistics.	Total.	Amount.	
		Dollars.	Cents
Number of days in the school term			
Number of teachers employed in said school: male, , female,			
Average daily compensation of male teachers in primary schools*			
Average daily compensation of female teachers in primary schools			
Average daily compensation of male teachers in high schools			
Average daily compensation of female teachers in high schools			
Number of male pupils enrolled between 6 and 21 years of age			
Number of female pupils enrolled between 6 and 21 years of age			
Whole number of pupils enrolled between 6 and 21 years of age			
Average daily attendance for the term			

*Note 1.—The term "primary," as used in this report, includes all schools in which all or a majority of the branches taught are prescribed by law. (See Section 147.) The term "high school" includes all schools above the primary.

Note 2.—Until this report is properly filled and filed with the Trustee, the teacher is not legally entitled to more than 75 per cent. of his wages.

Branches Taught.	Text Books used in each Branch.	No. of Pupils studying Each Branch.
Orthography		
Reading		
Writing		
Arithmetic		
Geography		
English Grammar		
Physiology		
History of the United States		

I, , teacher of the above-named school, do solemnly swear that the above report is true to the best of my knowledge and belief.

——— ———,

Teacher.

Subscribed and sworn to before me, this day of , 18 .

——— ———,

Trustee.

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